

1 Q Are you aware if Sana knew?

2 MR. BANDELLI: Objection as to what Sana knew.

3 THE COURT: Overruled.

4 A Yes, I know.

5 Q And she knew, correct?

6 A Yes. She went to the school across the street.

7 Q Right. And you would agree with me at some point prior  
8 to June 23, 2008, did Sana ever make a complaint against her  
9 mother, correct --

10 MR. BANDELLI: Objection, your Honor.

11 Q -- to the police?

12 MR. BANDELLI: Relevance.

13 A Never.

14 THE COURT: Overruled.

15 Q Never, right?

16 A Never, yeah.

17 Q Prior to June 23, 2008, as a family, you took  
18 vacations, correct?

19 A Yes.

20 Q And Sana had been to Florida, correct?

21 A Yes.

22 Q You had taken her south on other occasions, correct?

23 A Yes.

24 Q And you had taken her as a family to New Jersey,  
25 correct?

1 A Yes.

2 Q And as a family, Sana had been on vacations, other  
3 vacations as well, correct?

4 A Yes.

5 Q She had her cell phone paid by you and your wife,  
6 correct?

7 A By me.

8 Q I'm sorry?

9 A By me.

10 Q By you.

11 And you had medical insurance that she was --

12 A Yes.

13 Q Then when --

14 A Yes, through my job.

15 Q And Sana had lots of clothes in her house, correct?

16 A Yes.

17 Q And she had her own bedroom, correct?

18 A Yes.

19 Q Now yesterday, your wife testified, correct?

20 A Yes.

21 Q And you heard her testimony, correct?

22 A Yes.

23 Q And your wife is a witness that you and your lawyer  
24 called to testify in your behalf, correct?

25 A Yes.

1 MR. BANDELLI: Objection, your Honor.

2 THE COURT: He answered it.

3 Q And you heard when she testified that on June 23, 2008,  
4 you left the home between 3:30 and 4:00 in the morning, correct,  
5 you heard that testimony, correct?

6 A Yes.

7 Q In fact, that was the time that you left your house on  
8 June 23rd, between 3:30 and 4:00 in the morning?

9 A Yes, that's the time. That's why she said it.

10 Q No. That was the time you left the house, correct?

11 A That's the time she remembered. I think I left later  
12 than that. I think it was probably 4:30.

13 Q In the morning?

14 A Yes, in the A.M.

15 MR. BANDELLI: Judge, just for clarification.

16 MR. ROSENBLATT: Objection, Judge.

17 THE COURT: Is he talking about when he went to  
18 work or when he went to the precinct?

19 MR. BANDELLI: I am just asking for clarification  
20 because --

21 THE COURT: Talking about the precinct, Mr. DA?

22 MR. ROSENBLATT: That's what he said, Judge.

23 A Oh, no, I thought you talking about my job.

24 Q You left for your job at 4:00 in the morning on June  
25 23, 2008?

1 A Monday morning, I left for work 4:30, to work.

2 Q Do you remember we were talking about what your wife  
3 testified to yesterday?

4 A I thought you were talking about the job.

5 Q Your wife didn't testify about her job.

6 A She was asked questions about that.

7 Q She was asked questions about what time you left to go  
8 to the 105 precinct.

9 A I went to the 105 precinct about 2:25.

10 Q That wasn't my question.

11 You heard your wife testify you left the house to go to  
12 the precinct between 3:30 and 4:00 in the morning?

13 A She didn't say that.

14 Q She didn't say that?

15 A No.

16 Q Okay. Now as part of your work, sir, you were given an  
17 EcoLab truck, correct?

18 A Yes.

19 Q And --

20 MR. ROSENBLATT: Gary, if the witness can be  
21 handed People's Exhibit 9 that's in evidence.

22 THE OFFICER: (Handing.)

23 MR. ROSENBLATT: Thank you.

24 Q Take a look at what's in front of you as People's  
25 Exhibit 9 that's in evidence.

1                   That's your truck, correct?

2                   A    That's a company --

3                   Q    That's the truck that was given to you?

4                   A    Yes.

5                   Q    And they gave you that truck, correct?

6                   A    Yeah, while I was on the job, yes.

7                   Q    And no one else had keys to that truck, correct?

8                   A    No.

9                   Q    No one else other than you used that vehicle, correct?

10                  A    That's right.

11                  Q    You never gave the keys of that truck to anybody else,  
12 correct?

13                  A    Except for the police. They had to park it.

14                  Q    But prior to June 23rd, no one else had keys to that  
15 truck, correct?

16                  A    No.

17                  Q    And you would agree with me prior to June 23rd, you had  
18 never seen anyone else drive your truck, correct?

19                  A    That's correct.

20                  Q    And in your truck was the knife that you saw, correct,  
21 that came into evidence?

22                  A    Yes.

23                  Q    That was in your truck, correct?

24                  A    Yes.

25                  Q    That was in your truck underneath the center, near the

1 center console, correct?

2 A Well, it goes by the radio.

3 Q That's in the middle, near the center console, correct?

4 A Yeah, yes.

5 Q And you saw the vibrator that was received into  
6 evidence, correct?

7 A Yes.

8 Q That was under your bed?

9 A Yeah.

10 Q In your room?

11 A Yes.

12 Q Those were both yours, correct?

13 A Yes.

14 Q Over --

15 MR. ROSENBLATT: Withdrawn.

16 Q During the time Sana was in high school, you would  
17 occasionally drive her to school in the morning, correct?

18 A Yes.

19 Q And up until -- I'm just talking about the time from  
20 '05 up until May of 2008 -- you would occasionally pick her up  
21 from school as well, correct?

22 A Yes. Sometimes with her friends.

23 Q Sometimes you would have to drive home Christine  
24 Alioto?

25 A And other friends too.

1 Q And other friends?

2 A Yes.

3 Q You didn't drive Darrien to school, correct?

4 A Sometimes, if the school bus didn't come for them, my  
5 wife call; if I am close in the area, I go and drop them to  
6 school sometimes.

7 Q Sometimes?

8 MR. BANDELLI: Judge, I am going to object to this  
9 line of questions. On direct, I didn't ask my client any  
10 questions.

11 THE COURT: All right, Mr. Bandelli.

12 MR. BANDELLI: Okay. Well, just note that I am  
13 objecting on the basis that's beyond the scope of direct and  
14 it's improper cross.

15 THE COURT: Overruled.

16 Q And you didn't drive Kaitlynn to school, correct?

17 A Sometimes.

18 Q But primarily, you drove Sana?

19 A Yes.

20 Q And prior to May of 2008 when she was in high school,  
21 you would pick her up to two or three times a week, correct?

22 A Yes.

23 Q Now there comes a point in May of 2008 when you learn  
24 about the boy and you pick her up every day, correct?

25 A Not every day.

1 Q Well, isn't it true that you actually had a  
2 disagreement with your wife about how often you were going to  
3 pick her up?

4 MR. BANDELLI: Objection, your Honor.

5 A No.

6 MR. BANDELLI: Relevance.

7 THE COURT: Overruled.

8 Q So how many days a week did you pick her up starting in  
9 May of 2008?

10 A Sometimes it could be four, sometimes three, sometimes  
11 it could be two. Depends on the area I work. Sometimes I work  
12 all the way in Suffolk County, there was no way I could. She is  
13 to call me every day morning and evening for ride to go to  
14 school and to come from school.

15 Q In May of 2008, you drove her to school every day,  
16 correct?

17 A No.

18 Q You made sure you were available to pick her up,  
19 correct?

20 A Not all the time.

21 Q I just want to understand your testimony from  
22 yesterday, sir.

23 MR. BANDELLI: Objection to what the DA wants to  
24 understand, your Honor.

25 THE COURT: Sustained.

1 Q Sir, is it your testimony to the jury that if you told  
2 the police in June of 2008 that you molested your stepdaughter  
3 for the last two years, that they were going to let you go home;  
4 was that your testimony yes or no?

5 A Yes.

6 Q Can you tell us wherever in your entire life that you  
7 would heard of such a thing where if you tell the police you are  
8 molesting your stepdaughter, they let you go home?

9 MR. BANDELLI: Objection.

10 THE COURT: Sustained.

11 Q Well, do you read the newspaper, sir?

12 MR. BANDELLI: Objection, your Honor.

13 A Sometimes.

14 THE COURT: Overruled.

15 Q And you watch the news on television?

16 MR. BANDELLI: Objection, your Honor.

17 THE COURT: Counsel, approach for a second.

18 (Whereupon, a conference was held between all  
19 counsel and the Court off the record at the side-bar.)

20 Q Now sir, on direct examination yesterday you testified  
21 at some point when you entered the police, a group of police  
22 officers attacked you at the door, correct?

23 A They didn't attack me at the same time, not as soon as  
24 I walked through the door.

25 Q And at some point one of them pushed your face against

1 the table, correct?

2 A Not my face.

3 Q That wasn't your testimony?

4 A No.

5 Q And at some point you got pushed up against the wall,  
6 correct?

7 A I was.

8 Q And they spread open your legs, correct?

9 A Yes.

10 Q And they start cursing at you, right?

11 A Yes.

12 Q And they are threatening you?

13 A They didn't use threat at that time.

14 Q I'm sorry?

15 A No, didn't use any threat at that time, it was just --

16 Q They were calling you names?

17 A Yes.

18 Q And then you were pushed up the stairs, correct?

19 A Well, not like -- I was held by my hand and I was, you  
20 know, he was (indicating) like.

21 Q Well, were you walked up the steps or were you thrown  
22 up the steps?

23 A No, I walked up the steps, but with a force.

24 Q What does that mean?

25 A Coming from -- the detective, he held my hand, he was

1 pushing me up the stairs from my --

2 Q And your hands were touching, right?

3 A Yes, he was holding on one arm (indicating).

4 Q You would agree with me, sir, the detective helped you  
5 get up the steps?

6 A I wouldn't say helped, he helped -- I could have walked  
7 by myself.

8 Q And at some point, it's your testimony to this jury  
9 that Detective Shulman has you inside this room, correct?

10 A Yes.

11 Q And he grabs you by the neck and puts you against the  
12 wall, correct?

13 A He didn't grab my neck. He grabbed me by my shirt.

14 Q Grabbed you by your shirt?

15 A And slapped me against the wall.

16 Q And he slammed you against the wall?

17 A Yes.

18 Q And that hurt, right?

19 A Yes.

20 Q That's what your testimony is?

21 A Yes.

22 Q And caused you pain in your back, correct?

23 A Well, caused me pain but --

24 Q Where was the pain you are telling the jury you have?

25 A I had pain in my shoulders and on my arms (indicating).

1 Q Your arms?

2 A The back, yeah.

3 Q And your back?

4 A Yeah.

5 Q And your neck, right?

6 A Yeah.

7 Q Hurt a lot?

8 A Well, not a lot. I had pain.

9 Q Well, did it hurt or didn't it?

10 A It hurt.

11 Q And it's your testimony to this jury that this  
12 detective really, really did things to you that were bad,  
13 correct?

14 A Yes.

15 Q And at some point, the detective says to you what, to  
16 write down and that's what you write down?

17 A Yes.

18 Q And it's your testimony that at some point after that  
19 statement, the detectives tell you what to say on that video and  
20 that's what you said on that video?

21 A What he told me was he told me that, go there and look  
22 at the camera, be comfortable and ask any questions -- answer  
23 the questions, but then I'll be going home from there.

24 Q That wasn't my question.

25 My question was to you, sir: That at some point the

1 detective tells you what to say on the video, that was your  
2 testimony --

3 A Yes.

4 Q -- right?

5 And it's your testimony to this jury that the  
6 detectives tell you what to say on that video and then that is  
7 what you say on the video?

8 A Yes.

9 Q And it's your testimony to this jury that on June 23rd  
10 of 2008, the detective tells you that if you say stuff on this  
11 video, you're going to go home?

12 A Yes.

13 Q Okay. So you believe, sir, that on June 24, 2008, if  
14 you admit on video that you touched your daughter's breasts,  
15 you're going to go home?

16 A Yes.

17 Q You believe it's your testimony to this jury that if  
18 you admit on video that you touched your daughter's vagina,  
19 you're going to go home?

20 A Yes.

21 That's what he promised me.

22 Q I am not asking what he promised you.

23 A Yes.

24 Q I am asking what you believed on that date.

25 A Yes.

1 Q And it's your testimony to this jury that if you  
2 admitted on video that your daughter touched your penis, you  
3 were going to be permitted to go home?

4 A Yes.

5 Q Prior to June 24th of 2008, you were aware of what the  
6 district attorney was, correct?

7 MR. BANDELLI: Objection, your Honor. Relevance.

8 THE COURT: Overruled.

9 A Yes, I know what a district attorney was.

10 Q You are aware that they have a role in a courtroom,  
11 correct?

12 MR. BANDELLI: Objection, your Honor.

13 What's the relevance?

14 THE COURT: Mr. DA?

15 MR. ROSENBLATT: Judge, it goes to his claim of  
16 voluntariness.

17 THE COURT: Overruled.

18 A Yes.

19 Q You are aware that the role of the district attorney is  
20 different than the role of your own attorney, correct?

21 MR. BANDELLI: Well, objection, your Honor. He  
22 didn't have an attorney at that time.

23 THE COURT: Mr. Bandelli, don't make speeches in  
24 front of the jury.

25 Jury is to disregard Mr. Bandelli's comments.

1 The objection is overruled.

2 A Repeat the question?

3 Q You were aware on June 24, 2008, that the district  
4 attorney's role was different than the role of a defendant's  
5 attorney, correct?

6 A NO.

7 Q You didn't know that?

8 A NO.

9 THE COURT: Overruled.

10 MR. ROSENBLATT: I'm sorry, Judge. I missed his  
11 answer.

12 THE WITNESS: I said no.

13 MR. ROSENBLATT: Judge, can we approach?

14 THE COURT: Approach.

15 (Whereupon, a conference was held between all  
16 counsel and the Court off the record at the side-bar.)

17 THE COURT: You may proceed.

18 MR. ROSENBLATT: Thank you, your Honor.

19 Q You would agree with me, sir, that on June 24, 2008,  
20 that other than what's contained on that video, you had no  
21 conversations with District Attorney Hughes, Correct, Assistant  
22 District Attorney Hughes?

23 A Besides the tape?

24 Q Correct.

25 A Yeah, only on the tape I spoke to him.

1 Q Okay. And prior to --

2 MR. ROSENBLATT: Well, withdrawn.

3 Q You were able to see the tape the other day, correct?

4 A Yes.

5 Q And you had seen that tape before that, correct?

6 A Yes.

7 Q Other than what's contained on that tape, you had no  
8 conversations with myself, correct?

9 A No.

10 Q And you would agree with me, sir, that on that tape,  
11 you never complained of pain?

12 A No.

13 Q On that tape, you never asked for medical attention,  
14 correct?

15 A Correct.

16 Q You knew the tape was running, correct?

17 A Yes.

18 Q On that tape, you never said that you had been thrown  
19 around, correct?

20 A Correct.

21 Q In fact, on that tape, you were read your Miranda  
22 warnings?

23 A Yes.

24 Q And you were read the first question and you said yes,  
25 correct?

1 A Yes.

2 Q You were told you had the right to remain silent on  
3 video?

4 A Yes.

5 Q And you said yes?

6 A Yes.

7 Q You were told about a lawyer on the video and you said  
8 yes?

9 A Yes.

10 Q And when you were asked about wanting a lawyer, you  
11 didn't say, thank God it's being videotaped, I have been asking  
12 for a lawyer the entire day?

13 MR. BANDELLI: Objection, your Honor.

14 THE COURT: Overruled.

15 Q Did you say that?

16 A No.

17 Q When you were told that if you can't afford one, if you  
18 can't afford a lawyer, that one would be provided to you, did  
19 you say I'm going to take that option?

20 A No.

21 Q You weren't afraid of Assistant District Attorney  
22 Hughes, were you?

23 A No.

24 Q You weren't afraid of me when you were in that room,  
25 were you?

1 A No.

2 Q You weren't afraid of the man behind the video camera,  
3 were you?

4 A No.

5 Q Nobody told you on that video what to say, correct?

6 A Except for Detective Shulman.

7 Q No, my question is: On the video, nobody told you what  
8 to say?

9 A No.

10 Q And you were given an opportunity to answer questions,  
11 correct?

12 A Yes.

13 Q And you answered those questions?

14 A Yes.

15 Q And at some point, you even asked ADA Hughes or myself  
16 if you can explain something, correct?

17 A Yes.

18 Q And did you that?

19 A I did that.

20 Q You were given that opportunity --

21 A (Nodding.)

22 Q -- correct?

23 A Yes.

24 Q And on that video, you moved your hands back and forth,  
25 correct?

1 A Yes.

2 Q Those were the same arms that you complained were in  
3 pain from being thrown against the wall, correct?

4 A Yeah.

5 But I didn't say I was paralyzed, I said I had pain. I  
6 didn't say how much pain I had.

7 Q Nobody threatened you with a firearm, correct?

8 A No.

9 Q In fact, during the video, at any point in time, you  
10 had the opportunity to stop the video and say I don't want to do  
11 this anymore, correct?

12 A Yes.

13 Q You never did that?

14 A No.

15 Q In fact, right after the Miranda warnings are read, ADA  
16 Hughes asked you about allegations involving your daughter,  
17 correct; do you remember hearing that on the tape?

18 A Yes.

19 Q And he mispronounced your daughter's name, correct?

20 A Yes.

21 Q And you actually corrected ADA Hughes?

22 A Yes.

23 Q You weren't scared to correct him, right?

24 A No.

25 Q That wasn't the only time that you corrected ADA Hughes

1 or myself on that video, correct?

2 A I don't remember.

3 Q Detective Shulman asked you questions, I think two  
4 questions on that video, correct?

5 A Yes.

6 Q And your answer to his questions were "no," correct?

7 A I think so.

8 Q So he asked you questions and your answer to him was no  
9 on the video?

10 A I think, yeah, that's correct.

11 Q In fact, on the video, you suggested --

12 MR. ROSENBLATT: Well, withdrawn.

13 Q And in the video, you talked about your relationship  
14 with your wife, correct?

15 A Yes.

16 Q The sexual relationship with your wife?

17 A Yes.

18 Q And you talked about how the relationship began with  
19 your daughter, correct?

20 A Yes.

21 Q Those are all things that you said on the video?

22 A Yes.

23 Q You would agree with me, sir, that prior to the video,  
24 okay, before the video started, you were provided a bottle of  
25 water, correct?

1 A Yes.

2 Q In fact, on the video, you can see the bottle of water  
3 on the table?

4 A Yes.

5 Q And before the video started, you were given a bag of  
6 chips by ADA Hughes through Detective Shulman, correct?

7 A Chips? I don't remember. I don't remember.

8 Q You don't remember Detective Shulman giving you a bag  
9 of chips?

10 A He never give me anything to eat that I remember, no.

11 Q Well, you don't remember or the answer is no?

12 A I would say no, then, no.

13 Q Don't guess, sir.

14 A No, no.

15 Q So it's your testimony that you weren't given a bag of  
16 chips?

17 A Yes.

18 MR. ROSENBLATT: If I could have just one moment,  
19 your Honor, please.

20 THE COURT: Take your time.

21 (There was a brief pause in the proceedings.)

22 Q In fact, on the video you were asked specifically about  
23 how your relationship changed with your wife, correct?

24 MR. BANDELLI: Objection, your Honor. What's the  
25 relevance?

1 THE COURT: Overruled.

2 Q Do you remember being asked that question?

3 A Can you repeat it?

4 Q About why the relationship, about your relationship  
5 with your wife, and you responded it's hard to explain?

6 A I --

7 Q Do you remember giving that answer on the video?

8 A Yes.

9 Q Okay. And you explained that on the video, correct?

10 A Yes.

11 Q Is that something that Detective Shulman told you to  
12 say?

13 A No.

14 Q Now at some point --

15 MR. ROSENBLATT: Withdrawn.

16 Q You are aware of what of how to make a complaint  
17 against the police, correct?

18 MR. BANDELLI: Objection, your Honor.

19 THE COURT: Overruled.

20 Q I missed your answer?

21 A Can you repeat that question?

22 Q You are aware about how to make a complaint against the  
23 police, right?

24 A If I remember?

25 Q I didn't hear you.

1 A If I remember what?

2 Q You are aware of how to make a complaint against the  
3 police, correct?

4 A Yes.

5 Q And in this case, you never called and made a complaint  
6 against Detective Shulman after June 23, 2008; yes or no?

7 A No, no.

8 Q You never called Internal Affairs and made a complaint  
9 against Detective Shulman, correct?

10 A No.

11 Q On June 23, 2008, at some point on June 24th, you were  
12 brought before a judge, correct?

13 A Yes.

14 MR. BANDELLI: Objection, your Honor.

15 THE COURT: Overruled.

16 Q You never requested medical attention when you were  
17 brought before the judge, correct?

18 A No.

19 Q Never told the judge that you were beaten up, correct?

20 A No.

21 Q Never told anyone that the judge -- that you were  
22 forced into speaking on video, correct?

23 A Correct.

24 (There was a brief pause in the proceedings.)

25 Q On that video, you were not intimidated, correct, when

1 the --

2 MR. BANDELLI: Objection.

3 Q -- by assistant district attorney?

4 MR. BANDELLI: Can you be more specific?

5 Q By Assistant District Attorney Hughes when the tape was  
6 on, correct?

7 MR. BANDELLI: Objection. Asked and answered.

8 THE COURT: Overruled.

9 A No.

10 Q It's not your testimony Detective Shulman intimidated  
11 you, correct?

12 A No.

13 Q It's not your testimony when the video was on I  
14 intimidated you, correct?

15 A Correct.

16 Q It's your testimony that you believed by admitting to  
17 the police about abuse with your daughter, you were going to be  
18 let home by the district attorney's office, correct?

19 A Yes.

20 MR. ROSENBLATT: I have nothing further.

21 THE COURT: Any redirect? Ready?

22 MR. BANDELLI: (Nodding.)

23 (Whereupon, the witness left the witness stand.)

24 THE COURT: Mr. Bandelli, do you wish to call any  
25 other witnesses?

1 MR. BANDELLI: No, your Honor. Defense rests.

2 THE COURT: All right, ladies and gentlemen. As  
3 you can see, both sides have rested their case. You've  
4 heard all the testimony.

5 We are going to take a short recess to discuss  
6 some legal issues.

7 Remember you are not to discuss this case among  
8 yourselves or with anyone else. If anyone tries to discuss  
9 it with you, you are to bring it to my attention. You are  
10 not to form any opinions as to whether you feel the  
11 defendant is guilty or not guilty with crimes with which he  
12 is charged.

13 Please follow the instructions of the court  
14 officer.

15 (Whereupon, the jury exited the courtroom and the  
16 following occurred:)

17 THE COURT: Mr. Bandelli, any motions at the end  
18 of the entire case?

19 MR. BANDELLI: Yeah. As I made my motion  
20 throughout the case, your Honor, there has been a failure by  
21 the DA to use specificity to describe the charges in this  
22 case.

23 Allegedly this went on for over 36 months. If  
24 charges are broken down to four-month periods as was made  
25 clear during the direct of the People, and moreso on the

1 cross by myself, this witness, Sana Awan, was able to  
2 identify with more detail when exactly these alleged events  
3 occurred.

4 I don't know why the DA chose not to investigate  
5 it further and try to be more precise in terms of the dates,  
6 but that was his choice, and because of that, my client was  
7 at a disadvantage in terms of effectively preparing a  
8 defense in this case. It's impossible to come up with an  
9 alibi for 36 months. It's impossible to identify what  
10 you're doing every day, every week of every month for the  
11 37-month period. The DA is under an obligation to exhaust  
12 all investigative techniques in order to give a more precise  
13 time.

14 I know sometimes in cases like this when you have  
15 a witness who is six or seven or eight or nine years old,  
16 that's very difficult to accomplish. I get that. You have  
17 an 18-year-old girl talking about what happened when she was  
18 15. She is an A student. There is no mental health issues,  
19 there is no handicap, there is no disability. In fact, when  
20 she testified, she started giving more precise dates and  
21 times. The DA chose not to flesh that out, and now my  
22 client and myself, we have our hands tied behind our back in  
23 terms of preparing defense.

24 I believe under -- I think the case is People  
25 versus Condelle, People versus Morris, those are the older

1 cases, they are really the start of this whole area. The  
2 Court of Appeals has made clear that certain time periods  
3 when charged are excessive, they are unreasonable. It's not  
4 cured by breaking 37 months into four-month periods. That  
5 doesn't cure the excessiveness. It's even worse when a  
6 witness could have given more details when the DA exhausted  
7 his investigative tools.

8 The DA has failed to comply with the CPL. The DA  
9 has failed to comply with the cause law as cited by the  
10 Court of Appeals. Every count of this indictment should be  
11 dismissed because of that, Judge.

12 There is incredible prejudice in terms of my  
13 ability to effectively represent my client and produce  
14 witnesses in terms of when he was at work, when he wasn't at  
15 work, when the kids were home, whether the kids weren't at  
16 home, when he drove her to school, when he didn't drive her  
17 to school. And we are talking about a 37-month period.

18 So I renew my application to dismiss every count  
19 on the indictment for that basis.

20 Additionally, your Honor, according to the  
21 victim's testimony, the only point where any threats were  
22 made was in May of 2008, so I guess that would cover the May  
23 and June period. There is no allegations of any force being  
24 used prior to that. Based on the direct examination of ADA  
25 Rosenblatt, the force applied by my client was telling her

1 to shhh, telling her to behave. She never said he slapped  
2 her, she never said he -- she never said he threatened her  
3 at that time. It was "shhh, behave." I don't think "shhh,  
4 behave" rises to the level of force required as an element  
5 of criminal sexual contact in the first degree or sexual  
6 abuse in the first degree.

7 So any of those charges that require force based  
8 on the testimony that this DA elicited from his witness must  
9 be dismissed.

10 Those are my applications, Judge.

11 THE COURT: Mr. DA.

12 MR. ROSENBLATT: Judge, again, I would renew my  
13 same response that I made to the Court after I rested.

14 Additionally, I would just note for the record  
15 that the --

16 THE COURT: You renew your same response?

17 MR. ROSENBLATT: My same response, my apologies,  
18 your Honor.

19 THE COURT: What was your response?

20 MR. ROSENBLATT: Viewing the evidence in the light  
21 most favorable to the People, each element of each count of  
22 the indictment has been made out.

23 I would specifically address the argument that  
24 force wasn't made out. The complainant testified that the  
25 defendant forced himself on her, that she tried to push him

1 away and tried to get her -- him off of her and the  
2 defendant continued to do it.

3 And additionally, each time that she described the  
4 incident, she described the force used by the defendant and  
5 I would rely on the record as to that, Judge.

6 THE COURT: You have 53 counts here.

7 MR. ROSENBLATT: Yes, Judge.

8 THE COURT: How many of these do you think I'm  
9 going to submit to this jury?

10 MR. ROSENBLATT: I have 17 that I am asking your  
11 Honor to submit.

12 THE COURT: 17?

13 MR. ROSENBLATT: Yes.

14 THE COURT: You going to let us in on that secret  
15 soon?

16 MR. ROSENBLATT: Sure.

17 MR. BANDELLI: I would like to know, Judge.

18 THE COURT: Which ones are you dismissing?

19 MR. ROSENBLATT: Judge, first, I would seek to  
20 move to amend count one to read: Between May 1, 2005  
21 through June 30, 2005.

22 And I would also seek to attempt to read: Oral  
23 sexual act only. I move to eliminate the language "or anal  
24 sexual conduct."

25 MR. BANDELLI: Judge, I would just like the record

1 to reflect the DA knew about this before he even put the  
2 witness on the stand, and this is exactly my point.

3 MR. ROSENBLATT: It's made out in the Bill of  
4 Particulars, Judge.

5 MR. BANDELLI: But that's my point, Judge. That  
6 he knew about this before he even put her on the stand,  
7 before he even opened, okay? And if he didn't know about  
8 it, shame on him, because the witness knew about it.

9 So to present this as it happened between May and  
10 August when it happened May and June, how am I supposed to  
11 defend my client? That's my exact point.

12 MR. ROSENBLATT: The testimony was between May and  
13 June, Judge. The Bill of Particulars makes out the oral  
14 sexual conduct and the Bill of Particulars makes out the  
15 time period contained in the indictment.

16 MR. BANDELLI: Says May and August in the  
17 indictment. Doesn't say between May and June. He added on  
18 an additional two months.

19 How am I supposed to prepare my defense?

20 THE COURT: What does the testimony in the grand  
21 jury reflect?

22 MR. ROSENBLATT: The testimony in the grand jury  
23 reflects May through August.

24 MR. BANDELLI: Exactly.

25 MR. ROSENBLATT: She narrowed the time period down

1 during the time in front of the trial jury, Judge, and I  
2 believe pursuant to 200.70, I can present this to the jury  
3 as a smaller time period.

4 MR. BANDELLI: My argument has to do with my  
5 ability to effectively represent my client. The DA should  
6 have known that before we started the trial.

7 MR. ROSENBLATT: This is the first time at the  
8 trial stage this motion was ever made. No point in any  
9 motion was ever made, and in fact, the grand jury minutes  
10 were reviewed by another judge and another judge deemed  
11 those minutes acceptable.

12 MR. BANDELLI: I made the motion before we started  
13 the trial, Judge.

14 MR. ROSENBLATT: Which is way too late.

15 MR. BANDELLI: I wasn't the attorney.

16 Why is that way too late?

17 MR. ROSENBLATT: Judge, he has been the attorney  
18 for the last year and a half.

19 MR. BANDELLI: Actually, I have been the attorney  
20 since October 23rd of 2009.

21 THE COURT: Both of you, please, please, please,  
22 both of you.

23 Is the objection to the date amendment or the  
24 oral/anal issue?

25 MR. BANDELLI: Judge to the whole charge

1 THE COURT: Whole charge.

2 Do you have any other applications there, Mr. DA?

3 MR. ROSENBLATT: Yes, Judge.

4 I move to dismiss counts two and three.

5 THE COURT: Dismiss counts two and three?

6 MR. ROSENBLATT: Yes.

7 I move to amend count four to read: "Between

8 May 1st and May 31st of 2006," and move to eliminate:

9 "attempt to eliminate" or "anal sexual conduct."

10 MR. BANDELLI: Judge, these are things he should  
11 have known before he even put her on the stand. How am I  
12 supposed to represent my client effectively, make arguments  
13 on the facts and prepare for the defense when he has given  
14 me a bigger time frame, then taking the option after the  
15 testimony, after my client has testified, after we have all  
16 rested to say now, oh, I'm going to narrow the time frame  
17 down.

18 MR. ROSENBLATT: Your Honor, may I continue? Do  
19 you want me to continue going through the indictment?

20 THE COURT: In a minute.

21 MR. ROSENBLATT: Yes, your Honor.

22 (There was a brief pause in the proceedings.)

23 THE COURT: Continue.

24 MR. ROSENBLATT: Okay. Judge, just so your Honor  
25 understands where I'm going, through each of the counts that

1 I'm keeping are the ones she described in specific detail on  
2 the stand.

3 I am seeking to dismiss counts 5, 6, 7 and 8.

4 MR. BANDELLI: Can you just slow down a little  
5 bit?

6 MR. ROSENBLATT: I am moving to dismiss counts 13  
7 through 17.

8 MR. BANDELLI: 13 and 17.

9 MR. ROSENBLATT: 13 through 17.

10 I am moving to dismiss counts 19, 20 and 21.

11 I am moving to dismiss counts 23 through 28.

12 I am moving to dismiss counts 30 through 32.

13 I am moving to dismiss count 35 through 38.

14 MR. BANDELLI: 30 through 32 and 35 to 38; is that  
15 accurate?

16 MR. ROSENBLATT: Yes.

17 I am moving to dismiss counts 40 through 42.

18 I am moving to amend count 43 to the time period  
19 May 1st of 2005 through June 30th of 2005 to reflect count  
20 one, or mirror count one, rather.

21 I am also seeking on that count to eliminate the  
22 "or anal sexual conduct."

23 I am moving to dismiss counts 44 and 45.

24 I am moving to amend count 46 to mirror count,  
25 what was previously count four, to read: May 1st of 2006

1                   through May 31st of 2006, and to eliminate "or anal sexual  
2                   conduct."

3                   I am moving to dismiss counts 47 through 50.

4                   And on count 51, I am moving to eliminate the "or  
5                   anal sexual conduct" language.

6                   Judge, can I just point out one other thing that's  
7                   reflected in my motion papers, with your Honor's permission?

8                   THE COURT: What do you want to do?

9                   MR. ROSENBLATT: I just wanted to point out that  
10                   on the -- before everything gets renumbered, count 34 refers  
11                   to "the act described by the complainant on Commonwealth  
12                   Boulevard." I just wanted to point that out.

13                   THE COURT: Is that the only count that --

14                   MR. ROSENBLATT: Yes, I believe so, Judge.

15                   THE COURT: -- is alleged to have been committed  
16                   on Commonwealth Boulevard?

17                   MR. ROSENBLATT: Yes, Judge.

18                   (There was a brief pause in the proceedings.)

19                   THE COURT: Mr. DA, do you plan to call any  
20                   rebuttal witnesses?

21                   MR. ROSENBLATT: No, your Honor.

22                   And for the record, I would not oppose the  
23                   defendant's wife being present for summations.

24                   THE COURT: All right. You can notify the  
25                   defendant's wife if she is outside, she can come in back in

1 the courtroom now.

2 MR. BANDELLI: Okay. Can I just make a record  
3 about what just happened in terms of dismissing of the  
4 charges?

5 THE COURT: In a minute. I just want to go over  
6 these counts.

7 DA is moving to dismiss counts 2, 3, 5, 6, 7, 8,  
8 13, 14, 15, 16, 17, 19, 20, 21, 23, 24, 25, 26, 27, 28, 30,  
9 31, 32, 35, 36, 37, 38, 40, 41, 42, 44, 45, 47, 48, 49, 50,  
10 and the DA has moved to amend the fourth count.

11 MR. ROSENBLATT: Sorry, Judge. Also count one  
12 too, move to amend count one.

13 THE COURT: DA has moved to amend the first count  
14 to read: Between May 1, 2005 and May 31st or June?

15 MR. ROSENBLATT: No, between May 1, 2005 and June  
16 30, 2005, as to the testimony that was given by the  
17 complainant.

18 THE COURT: And to remove the "or anal sexual  
19 conduct."

20 MR. ROSENBLATT: Yes, your Honor.

21 THE COURT: And the DA has moved to amend the  
22 fourth count to read: Between May 1, 2006 and May 31, 2006,  
23 and to remove the "or anal sexual conduct;" is that correct.

24 MR. ROSENBLATT: Yes.

25 THE COURT: DA has also moved to amend the 43rd

1 count to read: Between May 1, 2005 and June 30, 2005, and  
2 to remove the words "or anal sexual conduct;" is that  
3 correct?

4 MR. ROSENBLATT: Judge, I'm sorry, I missed the  
5 time period. May 1st -- through June 30th is my request of  
6 2005. I just didn't hear your Honor.

7 THE COURT: DA has also moved to amend the 46th  
8 count to reflect the time period May 1, 2006 to May 31,  
9 2006; and to remove the words "or anal sexual conduct;" is  
10 that correct, Mr. DA?

11 MR. ROSENBLATT: Yes, your Honor.

12 THE COURT: DA has also moved to amend the 51st  
13 count to remove the words "or anal sexual conduct;" is that  
14 correct?

15 MR. ROSENBLATT: Yes, your Honor.

16 THE COURT: Have you moved to amend any other  
17 counts of this indictment?

18 MR. ROSENBLATT: Oh, Judge, my apologies.

19 Counts 9 through 12 should also -- my motion would  
20 be to move to amend it "oral only;" that is, to eliminate  
21 the words "or anal sexual conduct."

22 THE COURT: 9 through 12?

23 MR. ROSENBLATT: Yes.

24 And did I say count 51 already, Judge?

25 THE COURT: I just went over that with you.

7 Anything else?

8 MR. ROSENBLATT: No.

9 THE COURT: Do you want to make a record?

10 MR. BANDELLI: I do, Judge.

11 Well, I won't deny I am happy some of these counts  
12 got dismissed. I don't think it cures the problem that's  
13 already been created. Now it's actually exacerbated, and  
14 let me say why.

1 count. You know, no harm, no foul, no -- not the case,  
2 Judge. Just the opposite. Because I was required to  
3 prepare as if this particular crime occurred between May 1st  
4 and August 31st, okay? I wasn't required to prepare as if  
5 it occurred between May 1st and May 31st or between May 1st  
6 and June 30th in 2005.

7 The DA is under an absolute obligation to get more  
8 precise times, and it doesn't seem like it was that hard.  
9 It wasn't like we had to dig it out of her when she got on  
10 the witness stand. As a matter of fact, it came forward  
11 like kind of smoothly, kind of easily, so to say that, well,  
12 you know, Judge, I'm just going to cure this thing by doing  
13 that after the defense has rested, it's improper.

14 There may be some ethical issues around it. It's  
15 incredibly problematic. Every one of those counts that he  
16 moved to amend that had an extended time period should be  
17 dismissed at this point.

18 THE COURT: Anything else?

19 MR. BANDELLI: That's it, Judge.

20 THE COURT: Defendant's application is denied.

21 MR. BANDELLI: Note my exception, Judge.

22 THE COURT: You have your exception.

23 People's application to move to dismiss the counts  
24 I just enumerated is granted and his motion to amend  
25 pursuant to 200.70 of the CPL to amend those counts which I

1 just enumerated is granted.

2 The indictment now contains 17 counts. The fourth  
3 count becomes the second count; the ninth count becomes the  
4 third count; the 10th count becomes the fourth count; the  
5 11th count becomes the fifth count; the twelfth count  
6 becomes the sixth count; the 18th count becomes the seventh  
7 count; the 22nd count is now the eighth count; the 29th  
8 count is now the ninth count; 33rd count is now the tenth  
9 count; the 34th count is now the 11th count; 39th count is  
10 now the 12th count; the 43rd count is now the 13th count;  
11 the 46th count is now the 14th count; the 51st count is now  
12 the 15th count; the 52nd count is now the 16th count; and  
13 the 53rd count is now the 17th and final count.

14 We will now proceed with closing arguments.

15 Bring in the jury.

16 MR. ROSENBLATT: Judge, could we just approach?

17 THE COURT: Approach.

18 (Whereupon, a conference was held between all  
19 counsel and the Court off the record at the side-bar.)

20 THE COURT: Defense application for missing  
21 witness charge is denied.

22 MR. BANDELLI: With regard to the missing witness  
23 charge, your Honor, there was evidence offered at the trial  
24 that my client was taken into custody by a police officer  
25 that worked at the 105 precinct that was not called by the

1 People at the trial.

2 Counsel has made numerous -- counsel being defense  
3 counsel -- to identify who that police officer was either by  
4 obtaining paperwork or asking questions of the witnesses  
5 presented by the People. Unfortunately, nobody was able to  
6 answer the question who that officer was that was working at  
7 the 105 precinct, but based on the testimony of the witness  
8 presented by the People, Ms. Alioto, it was clearly a  
9 uniform police officer at the 105 who initially placed my  
10 client in custody, and that's corroborated by the testimony  
11 of Detective Shulman and Police Officer Alfaro -- who has a  
12 new name -- but both of them had testified that my client  
13 was in custody prior to their being involved in the case.

14 This is incredibly significant where there is a  
15 statement taken from my client and there are issues as to  
16 the voluntariness of the statement. There are issues as to  
17 whether or not my client had asked for an attorney, there  
18 are issues as to whether or not my client had asked to make  
19 a phone call, there are issues as to whether or not my  
20 client had indicated that he did not want to speak with  
21 anybody without an attorney.

22 Whoever this was clearly has material relevant  
23 evidence to offer in this area. Whether it would be in  
24 support of my argument or against my argument, I can't say  
25 at this point because it's not being provided; however, the

1 DA has the ability to get the information to bring this  
2 witness in and chose not to do that. Therefore, under the  
3 case law, I am entitled to a charge an inference may be  
4 drawn unfavorable to the People as to what the testimony of  
5 that police officer would be.

6 There is no record that the People have used any  
7 diligence or any efforts to identify that police officer.  
8 We know that he was on the 105 precinct when this happened.  
9 This is an important charge in this case, the voluntariness  
10 of the statement, my client's right to have an attorney  
11 prior to making statements, prior to being interviewed all  
12 night for approximately 15 hours by Shulman and the DA.  
13 This is a very important issues in the case and I am  
14 requesting that that charge be given to the jury.

15 THE COURT: Mr. DA, do you wish to respond?

16 MR. ROSENBLATT: Yes, Judge. I did some research.  
17 I have some case law which I provided to the Court.

18 This is not a material fact issue where there are  
19 questions untimely, more personal. The issue as to whether  
20 it goes to a material fact in the case, this does not.

21 MR. BANDELLI: It absolutely does.

22 THE COURT: Defendant's application for missing  
23 witness charge is denied.

24 (Attorneys at sidebar but argument was taken in  
25 open court.)

1 (Whereupon, a recess was taken, after which the  
2 following occurred.)

3 THE COURT: Bring out the jurors, please.

4 (Whereupon, the jury entered the courtroom and  
5 upon taking their respective seats, the following occurred:)

6 THE COURT: Mr. Bandelli, do you wish to make a  
7 closing argument on behalf of the defendant?

8 MR. BANDELLI: Yes, I do, Judge.

9 THE COURT: You may.

10 MR. BANDELLI: Thank you, Judge.

11 Ms. Foreperson, ladies and gentlemen of the jury.

12 Good afternoon.

13 THE JURY: Good afternoon.

14 MR. BANDELLI: Good afternoon.

15 It's been awhile. Couple weeks. Well, this is  
16 it, this is the showdown, okay? My client, Harold Gopaul,  
17 is not guilty of any of the charges in this case. Not  
18 guilty. There is no evidence to support it. Zero. There  
19 is no physical evidence of sexual abuse.

20 Sana gets up, she testifies that she went to the  
21 hospital, right? She went to the hospital to get examined.  
22 It sounded the way they described it as some type of  
23 gynecological. I have never been to one, but I got the  
24 sense from the way they described it, it's one of those  
25 intimate, private examinations, right?

1                   You hear testimony from ADA Hughes that he went  
2 there, we hear testimony from Jenny that she went there, we  
3 hear testimony maybe from somebody else who went there. But  
4 who didn't we hear testimony from? Who didn't we hear  
5 testimony from? The doctor. We never heard from the doctor  
6 who examined her. Why do you think that is? If that doctor  
7 had detected any evidence of sexual abuse, don't you think  
8 he or she would have been here to testify to that? Right?  
9 That would be a good witness for the People. Mr. Rosenblatt  
10 could get up there: Doctor, you had an opportunity to  
11 examine Sana Awan? Yes, I did. And you know you did this  
12 test, you did this test, you did that evaluation, and what  
13 did you find, doctor, what were your conclusions. Oh, that  
14 there was sexual abuse, there was evidence of sexual abuse.  
15 We didn't hear that testimony, did we? That's because there  
16 is no physical evidence of sexual abuse.

17                   There are no witnesses to the sexual abuse. Sana  
18 lived in the same house with her father, with her mother,  
19 with her brother, with her sister, the whole time this was  
20 allegedly going on. The whole time, right?

21                   They sleep on one floor, the second floor of the  
22 house. The bedrooms are all beside each other. There is  
23 Sana's bedroom, there is the master bedroom, there's the  
24 son's bedroom and right here is the bathroom (indicating),  
25 okay? Everything is there on the same floor.

1                   According to the testimony, Sana sleeps with the  
2 daughter, the son sleeps with the mother, nobody uses the  
3 last bedroom, so they are sleeping in the two bedrooms that  
4 are closest to the bathroom right?

5                   Does anybody here live in a small house like that?  
6 I can't get a moment where I can go to the bathroom by  
7 myself in my house. Every time I'm in the bathroom, this  
8 morning, as a matter of fact, every one of my kids came in  
9 and then my wife came in. There is no privacy in a small  
10 house, okay?

11                  It is unfathomable, it is unfathomable that this  
12 could have been going on for three years in this house and  
13 not a single person, not a single person had any idea it was  
14 going on. Not one person in that house. The sister didn't  
15 come up here and testify, the brother didn't come up here  
16 and testify. The mother came up and testified.

17                  THE COURT: Objection.

18                  MR. ROSENBLATT: Calls for speculation, Judge.

19                  THE COURT: Sustained.

20                  MR. BANDELLI: Nobody testified that they  
21 witnessed anything going on in that house.

22                  Now there is also testimony that it had happened  
23 before school, that it had happened in a car before school,  
24 right, at a high school, right, where all the kids are  
25 coming into school together and this girl apparently is

1 being molested, right? This is horrible stuff. She is  
2 being threatened with a knife. I am going to cut off your  
3 finger, right? And then these horrible, disturbing acts are  
4 going on in this car. There is not a single witness. She  
5 goes to school, nobody puts her aside and says, are you  
6 okay? You don't look okay, did anything happen?

7 Went to school, I know there are people that are  
8 here that work for the Department of Education. Aren't  
9 there like systems set up in the school to identify children  
10 who have been victims of abuse? The teacher will say: Do  
11 you know what, somebody, so-and-so didn't look okay. Maybe  
12 we should talk to them after class, maybe she could contact  
13 their parents, right?

14 This girl is saying she was threatened, that he  
15 licked her vagina, that he touched her breasts, whatever it  
16 was, but very, very upsetting stuff, right before she went  
17 to school. And nobody, nobody has any clue about it.  
18 Nobody.

19 There are no symptoms of sex abuse, okay? There  
20 was time spent going over Sana's school records, right? One  
21 of the things that I attempted to bring out, and Sana  
22 acknowledged, was that her grades actually improved from the  
23 time this allegedly occurred until June 23rd when she  
24 reported it in May, when she first started in high school,  
25 actually, which would have been September of 2008, she was a

1 B student. When she got to June of 2008, the end of her  
2 junior year, she was actually an A student. I mean, you got  
3 to use your common sense here a little bit too, all right?  
4 This is going on for three years, my dad is sexually abusing  
5 me, threatens me with a knife, all of these horrible things  
6 are happening, and yet, and yet, I am continuing to  
7 concentrate in school. I'm doing better. I'm improving.  
8 Not only that, she graduated high school on time, she is  
9 going to college, she has got a 3.5 average, she is working,  
10 she looked pretty good up there. She doesn't look as if she  
11 is somebody who suffered sexual abuse and threats of  
12 violence for three years.

13 There is no testimony that she was an alcohol  
14 abuser, there is no testimony that she developed some type  
15 of substance abuse, there is no testimony that she tried to  
16 kill herself, there is no testimony that she started  
17 withdrawing from her friends or her family.

18 DA knows these are problems, right? He knows  
19 these are problems, so he wants to explain them away by  
20 calling Dr. Lewittes, right? He calls in this guy in a  
21 suit. Looks good, sounds good, has all the credentials,  
22 graduated with this degree, graduated with that degree,  
23 familiar with this story, familiar with that story, very  
24 proud, right?

25 What do we know? He is a hired gun. This is what

1                   he does for a living. He is getting paid to be here to  
2                   testify, right? That's a source of income. That's expert  
3                   testimony, that's what he does for a living. He comes in  
4                   and he explains things for the DA.

5                   Now I would note for you, and I think this is very  
6                   important, that he never examined Sana Awan. He never spoke  
7                   to Jenny Gopaul, the mother. He never spoke to Harold  
8                   Gopaul, the father. He never interviewed anybody at her  
9                   school, he never looked at her school records. He knows  
10                   nothing about the witness in this case. Zero. Nothing.

11                   So look at Dr. Lewittes for what he is. He is a  
12                   hired gun, okay? He is a guy who is brought in to help him  
13                   out when he is having problems. That's it. Nothing more.  
14                   And he doesn't even cure those problems because he can't  
15                   even acknowledge anything. Well, isn't it true that, you  
16                   know, school grades can be a sign of, you know, somebody  
17                   doing poorly in school, that can be a sign of being sexually  
18                   abused? Well, it can be and it can not be. How about  
19                   alcohol abuse? Well, it may be and it may not be. Well,  
20                   everything may be and it may not be, so what is he telling  
21                   us? What's he telling us? He is telling us nothing, okay?  
22                   It was a waste of time. Waste of time.

23                   One of the things we know also about Sana, right,  
24                   from her testimony, the testimony of the People's witnesses,  
25                   is that -- and from my witnesses as well and the

1                   cross-examination of the DA -- she has an active social  
2                   life, right? She is very active in school. She goes to  
3                   afterschool activities, she has a group of friends, right?  
4                   None of whom came forward to testify that --

5                   MR. ROSENBLATT: Objection.

6                   THE COURT: Overruled.

7                   MR. BANDELLI: -- none of whom came forward to  
8                   testify about anything that had been going on in the past  
9                   three years that might have given them cause for concern  
10                   that Sana was being victimized in some way, okay?

11                   She is going to basketball games, she is going to  
12                   the movies, she has her dance, she has her math class.  
13                   Everything is going good. Everything is going good.

14                   There are no signs of sexual abuse. Christine  
15                   Alioto testified that she and Sana were best friends during  
16                   high school, right? That was the best friend. Never once  
17                   did she indicate that she noticed anything about Sana's  
18                   behavior that suggested that anything was wrong. In fact,  
19                   in fact, she testified that on more than ten occasions my  
20                   client drove her either to or from school, right? She said  
21                   I don't feel unsafe with Harold. Nobody felt unsafe with  
22                   Harold because there was no reason to feel unsafe with  
23                   Harold.

24                   That's the evidence that's missing in this case.  
25                   None from the witnesses, no physical evidence, no signs, no

1 symptoms. So what do we have? What does the DA have here,  
2 right? We all know what he has. He has a girl who  
3 testified within two months, within two months of her  
4 parents disrupting a relationship with an older boy who  
5 remains unidentified, right -- couldn't find out who this  
6 guy was, right, what's his name? Objection sustained. I  
7 can't find out who he is.

8 MR. ROSENBLATT: Objection, Judge. As to the --

9 THE COURT: Sustained.

10 MR. BANDELLI: Right? Nobody knows who he is.  
11 Okay? Never came here to testify, right?

12 Based upon my client and his wife, the mother and  
13 the father disproving and shutting down this relationship,  
14 within two months, within two months there is an allegation,  
15 right?

16 And what else happened? Within two days of a very  
17 explosive moment at a fair at which she testified she was  
18 publicly humiliated, he embarrassed her in front of her  
19 friends -- we don't know if the belief was there, we know  
20 you've been there too -- within two days of that and within  
21 two days of a very, very horrible and traumatic scene in the  
22 house where there was an argument and my client slapped his  
23 daughter on the arms in front of the other kids and  
24 everybody was very devastated, within two days of all of  
25 these events, for the first time, for the first time, this

1 comes out, right?

2 And it doesn't come out to the mom, doesn't come  
3 out through another family member. Somehow it comes out to  
4 the Aliotos.

5 And I'm not quite sure what the Aliotos are all  
6 about. I have to tell you, I don't get it, all right? This  
7 mother and daughter somehow take it upon themselves for  
8 whatever reason to rescue Sana. They are going to rescue  
9 her, they are going to take her and drive her all around  
10 Queens and secret phone calls, these clandestine phone  
11 calls.

12 Ms. Alioto, why are you making these phone calls?  
13 Well, I don't want to get in trouble for driving around a  
14 kid in my car. Sana is 17 years old. It's what, 8:30,  
15 9 o'clock at night. What trouble you going to get in, or is  
16 there something that you're concerned about that you're not  
17 sharing with us? Is there a conversation occurring that you  
18 don't want to disclose? All right, why? Why is she afraid  
19 of getting in trouble for driving around with a 17 year old  
20 at 9 o'clock at night? Why is she spending all night at the  
21 precinct? Think about that. This woman spent a whole night  
22 at the precinct. What's that this is all about.

23 And then on top of that on top of that, and this  
24 is beautiful, I love this, she is the one -- she is the one  
25 who gave the cop the heads up. She is the one, she

1 testified that, you know, she is going down for a smoke  
2 break, I guess she has done whatever she is doing upstairs,  
3 and she sees my client come through the doors and she is the  
4 one who indicates to the cops, okay, there he is, there he  
5 is. This is very exciting for her, I guess. You know, a  
6 big soap opera, very traumatic, very traumatic. She is  
7 there at the precinct and this is all a lot of excitement.

8                       Okay. Bottom line is my client is coming there to  
9                       report his daughter missing, right? He is coming there to  
10                      report his daughter missing. He comes there in his car in  
11                      his work clothes after coming home after checking in on the  
12                      kids, right, saying Sana is not here, Jenny, get up, get up,  
13                      Sana is not here. You know, we got to, we got to -- I am  
14                      concerned, right, because he knows there was a bad fight two  
15                      days earlier, right?

16 MR. ROSENBLATT: Objection.

17 THE COURT: Sustained.

18 MR. BANDELLI: He knows that there was an issue at  
19 the fair. My client, right, he knows all about that. He is  
20 going, gosh, she is gone. She has taken off. We have got  
21 to go to the police. Somebody has got to report this to the  
22 police.

23 I am going to call the Aliotos, that's what he  
24 testified to because he knows they are very close. I am  
25 going to call them. There is no answer at the Aliotos.

1 Isn't it interesting that the Aliotos, Ms. Alioto never  
2 reaches out to Sana's mom? Never. Did she have a personal  
3 relationship with Sana's mom or did she have an experience  
4 with Sana's mom that would lead her not to notify the mom?  
5 Say, hey, listen, and tell her you're taking the kid to the  
6 precinct. Even, listen, I don't know what happened, I don't  
7 want to be involved, your daughter said some really horrible  
8 things, I am just going to bring her to the precinct, okay?  
9 But I want to let you know that's where your daughter is.  
10 That's what my neighbor would do, right? Because you are  
11 not endangering by letting the mother know, who is not  
12 accused of anything, that there is -- this is where the kid  
13 is, right? As a parent, would you not want to be notified  
14 at least that this is where my kid has been? Taken that my  
15 kid is at a precinct, she is not like dead somewhere.

16 Maybe that's why she is running around making  
17 phone calls because she has got an agenda. I don't know  
18 what her agenda is, but she doesn't call the mom, she  
19 doesn't say, hey, listen, meet us at the precinct, please,  
20 there is something serious going on.

21 No, that's not how she is going to handle it. So  
22 my client, on his own, not knowing where the heck his  
23 daughter is, right, and it's clear he loves her, right --  
24 the daughter testified to that, he testified to that -- he  
25 goes and he doesn't even change his clothes. He is there in

1                   his work clothes, drives there in his work car, and I submit  
2                   to you -- and I said this during my opening statement -- if  
3                   you have been sexually abusing a child for three years, she  
4                   disappears in the middle of the night, are you going to a  
5                   police precinct to report her missing? If you for one  
6                   second have any sense of guilt or concern that you might get  
7                   in trouble because you have been doing something so horrible  
8                   for three years, are you going to the police or do you get  
9                   in the car and hit the road? He went to the precinct. They  
10                  didn't come and get him, he went there. He shows up there  
11                  on his own immediately. Which is what a concerned parent  
12                  would do.

13                  From the second my client showed up at the  
14                  precinct, this thing spins completely out of control.  
15                  Completely out of control, right? We know that. For  
16                  whatever reason, nobody seems to know who placed my client  
17                  in custody. We have a second grade detective, works on  
18                  homicides, big, husky detective, right? He doesn't know who  
19                  the police officer downstairs is that put my client in  
20                  handcuffs? He doesn't know? How the heck can you not know  
21                  that? Why don't you know that? Why don't you want to know  
22                  who the police officer is that put my client in handcuffs?  
23                  That's hard to figure out, right? Get out of your chair,  
24                  walk downstairs. Yeah, that's Detective Shulman, Sergeant  
25                  Omega, tell me who the officer was. It's in my report, I

1 want to be thorough. I want to get statements from this  
2 guy. I want to know who the officer is, right? I don't  
3 want to give the appearance anything improper is going on.  
4 Tell me who the officer is. Is that that hard?

5 Is that? But he doesn't know. He didn't recall,  
6 doesn't recall. I don't recall, I don't recall. You don't  
7 know, and then for some reason, Police Officer Alfaro who  
8 was like on patrol is called back to the precinct to take  
9 the arrest? What's that about? You have detectives and  
10 police officers in the precinct, the police officers already  
11 put my client in custody, right? Yet you're calling out to  
12 a police officer who is out on the street to come back to  
13 the precinct after my client is in custody to take over?  
14 What's that about? What's that about? Does that make any  
15 sense to anybody?

16 What is going on at the 105 precinct, ladies and  
17 gentlemen? What's going on? Mr. Shulman talked to the girl  
18 for an hour and a half, give or take ten minutes or  
19 whatever, got some information from her, found out what was  
20 going on and went into this other interview room and my  
21 client is just standing there appearing from out of the  
22 blue. Got a phone call that he was in there. Huh? What do  
23 you mean? He was just -- you don't know who told you he was  
24 up there, you didn't speak to somebody to bring him up, he  
25 just shows up in this room sitting there like what's going

1 on. Why don't you just tell us what's going on? These are  
2 like really simple questions. I mean, who brought him up?  
3 Who told you he was up? Who placed him in custody? What  
4 have you got, what are you holding back? What don't you  
5 want us to know?

6 So he goes in there the first time. He is rough  
7 with my client. He is a big guy. Shulman, he weighs what,  
8 150 pounds. Shulman gets in, you are going to tell me what  
9 I want to know. You are going to tell me what I want to  
10 know. There are allegations, I want the truth. I want the  
11 truth. I'm here for the truth. You're going to sign this,  
12 you're going to sign this, my client does this, my client  
13 already got smacked around downstairs, all right? He is a  
14 little guy. He doesn't know what the heck is going on here.  
15 Oh, shit, is this because of what happened at the fair,  
16 because we had an argument at the house after the fair?  
17 Like what's going on? These cops are beating the crap out  
18 of me, throwing me in a room upstairs by myself, closing the  
19 door; there is no window, there is no clock. I am sitting  
20 here trying to find out where my daughter is.

21 So then Shulman leaves after he says I'll tell you  
22 whatever you want to know, just get me the hell out of here.  
23 I'll tell you whatever you want to know.

24 Here I am waiving my Miranda warning, no, I don't  
25 want a lawyer -- which he did say I want a lawyer -- but no,

1 I don't want a lawyer, I want to talk to you, Detective  
2 Shulman, I trust you, Detective Shulman, you are my friend,  
3 you are my daddy, I want to talk to you. I want to talk to  
4 you, Detective Shulman at 4 o'clock in the morning,  
5 5 o'clock in the morning in this little room. I want to  
6 talk to you. I trust you, right?

7 And then what does Shulman do after he gets him to  
8 sign everything and say yeah, you can search the car, you  
9 can search my house? Shulman walks out, that's his  
10 testimony, he walks out of the room. What's that all about?  
11 This guy just said here, I want to talk to you, go search my  
12 car, search my house, I want to talk to you, then Shulman  
13 walks out and goes up and walks out? What's that about?

14 Shulman comes back some time later. Nobody knows  
15 what time it is, but he comes back, says you're going to  
16 give me a statement, and my client does -- let me see --  
17 gives him the first written statement, basically tells him  
18 everything about what happened at the fair. Look, at the  
19 same time, my friend, Saturday, June 21st, my family had  
20 gone to St. Gregory's fair to have some fun and he goes on  
21 from there and tells them everything that happened. We went  
22 to the fair, my wife was sick. Do you know what, we wanted  
23 to have a good time but my wife wasn't feeling well. There  
24 was intention Sana wanted to stay longer. We wanted her to  
25 go da-da-da-da. It got a little bit hot. I am telling you

1 what happened. When I got home, it got worse. I handled  
2 it, I hurt hit her in the arms. I know you think that's  
3 wrong, I understand. I hit her on the arm, I did. Okay?  
4 There is the statement.

5 Shulman leaves the room again, comes back a little  
6 bit later and now it's a little bit different. He is  
7 rolling his sleeves up. You're going to tell me what you  
8 know. I put people away for twenty years. You're going to  
9 tell me what you know. It's no joke.

10 Look at his shirt in the videotape. Look at the  
11 way the collar is spread, okay? Look at the way that collar  
12 is spread in the video. If you watch it again, if he shows  
13 it again, look at it. This guy was physically roughed up.  
14 Yeah, he was smart enough not to punch them in the face or  
15 clock them over the head, right, because he knew at some  
16 point this might end up on video, but he did what he had to  
17 do, right? And he told you he was going in there to get the  
18 truth. I going to get the truth. Well, you had the truth.  
19 Why you coming back? He told you what happened at the fair,  
20 why are you coming back? Because he wants more. He wants  
21 more, and what's interesting is if you look at these two  
22 statements -- and I ask that you do that -- and the  
23 following statement, the wording kind of changes.

24 It's not where my client just starts off my family  
25 had gone to St. Gregory's fair to have some fun. All of a

1 sudden for the first time, my client is identifying himself  
2 by name. I, Harold Gopaul, and then he says: Is writing  
3 this of my own free will. Is this his will that he is  
4 writing out here that he is saying I am writing this of my  
5 own free will? Why do you think this language is in there?  
6 Do you really think that's his words? Do you really think  
7 that's his words, or did the detective tell him what to say?  
8 I want you to put on the top of it you are doing this on  
9 your own and it's of your own free will.

10 And then Detective Shulman says: I want you to  
11 say this and I want to you say this and he is writing, okay?  
12 What else do you want me to write, and then unfortunately,  
13 after he is finished writing, everything, he didn't mention  
14 his daughter's name in it, so Shulman looks at it and says  
15 you forgot to mention your daughter's name in it too, so in  
16 the last line he says my daughter is a Sana Awan, is the  
17 person I am talking about.

18 Do you really think he put that in there on his  
19 own? My daughter, Sana Awan, is the person I am talking  
20 about? Did we have any doubt who he was talking about or  
21 wasn't talking about? Did he have any doubt about what  
22 Detective Shulman wanted him to say at that time, but it  
23 wasn't enough it wasn't enough? Shulman wanted everything.  
24 You got to say it was your daughter, Sana Awan you were  
25 talking about, you got to say this. I need this in the

1 statement. And he says, don't worry, I will back off. We  
2 will take care of this. You will go home, you'll be okay,  
3 just do what I'm telling you to do.

4 Shulman leaves again -- there is one more  
5 statement, hold on. Oh, this one, right -- and what's  
6 funny, this is the last written statement, but none of this  
7 is in my client's words, so clearly what had happened was  
8 Shulman got frustrated at this point, was getting tired of  
9 telling my guy what to write, says do you know what, it's  
10 frigging 9 o'clock in the morning, I am just writing it  
11 myself. Because if you look, and he said it, they are in  
12 his own words, so Shulman starts: My girl is telling you  
13 the truth, it's not what he wants to hear. He threatens him,  
14 gets violent with him, tells him what he wants to hear,  
15 tells him what to write down. Then ten hours later, I  
16 guess, Shulman is shot, I am not going to waste my time  
17 telling you what to write, I will just write it down  
18 (indicating). It's nonsense. It's horrible. Detective  
19 sworn to uphold justice would operate in this fashion, to  
20 testify that way.

21 He knew who the police officer was who placed him  
22 in custody. You don't get to be second grade detective. He  
23 knew exactly what he was doing. He was going to get a  
24 statement out of this guy no matter what. He was going to  
25 get him to say what he needed, whom he said it to.

6 You know, the DA, ADA Hughes, yeah, we are on  
7 24/7, you can get us any time. So page him, tell him this  
8 is important, this is important evidence, I don't -- I want  
9 to videotape, unless you don't want it videotaped. You  
10 don't want this on videotape. This is behind.

1 Detective Shulman. That's what you didn't see it on the  
2 video, it's not. What you saw was a script, that's a script  
3 and it took 15 hours to get it together, 15 hours. And the  
4 DA told you he spoke to Shulman before he went there. There  
5 he knew what Shulman had gotten out of him already. They  
6 knew what was going to come out when they got there. They  
7 knew the questions and answers. Maybe a few curve balls,  
8 but they knew what they hoped to get.

1                   you don't have to, but I caught it. I saw it. He is not  
2                   looking at the DA those times, he is looking at Shulman.

3                   Why is he looking at Shulman? What's Shulman  
4                   doing to him? And the DA is probably going to make a whole  
5                   point of why, why would the cops make this up, why would the  
6                   cops do all this, what do the cops have to gain by creating  
7                   this whole scenario? Why would the cops make up the  
8                   statement, that's ridiculous, that's nonsense. Why would a  
9                   cop come up here, what does he have against Harold Gopaul  
10                  that he would come up here and do that?

11                  Well, I'm tell you. Police Officer Alfaro got up  
12                  here and I caught her lying twice under oath. Twice, right?  
13                  She testified that in the grand jury under oath she talked  
14                  to the complainant, she talked to Sana, then she put her in  
15                  custody, right? Then she testified here that she placed my  
16                  client in custody and then she spoke to Sana. She lied.  
17                  She lied. It's on record, okay? She lied under oath. I  
18                  don't know which one it was, we don't know what the answer  
19                  is, but she lied.

20                  And then there is a second lie where she says  
21                  that, here, she didn't know whether or not my client was in  
22                  custody before she got to the precinct, right? And she had  
23                  testified previously at a hearing under oath that she had  
24                  been informed that my client was in custody. So she is  
25                  lying again. I don't know why. I don't know why. Can't

1 answer why police officers lie, but she lied. I saw it.  
2 It's on the record, it's under oath. What am I supposed to  
3 do with that? I can't tell you why certain people lie, all  
4 right, but there is evidence that this officer lied.

5 Shulman doesn't know who the police officer was  
6 that placed my client in custody. Do you really believe  
7 that? Why does he have to lie about that? You know he is  
8 not telling the truth about that, right? I would want to  
9 know. I would want to know because I know a lawyer is going  
10 to come in and say, do you know what, something must have  
11 happened, something must have happened. We better find out  
12 who that officer was so that the lawyer can't say that they  
13 didn't get that officer. What does that tell you? That  
14 something must have happened. Something must have happened,  
15 right? They are withholding, holding back, can't trust that  
16 testimony.

17 Mrs. Jenny Gopaul. The mother, the wife. She  
18 came here and she testified on behalf of Harold, not Sana,  
19 two years after it happened. Struggling. Struggling to  
20 figure out what the heck happened, right? The mom and the  
21 wife. There are these horrible allegations. What's going  
22 on, what's going on? My husband has gotten arrested. He  
23 gave a confession, he is saying they forced him to make the  
24 confession. My daughter is telling me he didn't do it, he  
25 never touched me. Six months later, he is lying, she is

1                   lying. Who is, what's going on? Who is telling the truth?  
2                   I don't know what to do. I got to figure this out. Who is  
3                   telling the truth? Who do I believe? Do I believe my  
4                   husband, do I believe my daughter; who do I believe?

5                   She came here and testified for the defense. You  
6                   know who she believed.

7                   MR. ROSENBLATT: Objection.

8                   MR. BANDELLI: You know who she testified for.

9                   THE COURT: Sustained.

10                  MR. BANDELLI: Nobody, nobody knows these parties  
11                  better than Jenny Gopaul. Not me, not him, not him  
12                  (indicating), none of you. She knows her daughter and her  
13                  husband because she came to testify on behalf of her  
14                  husband. Should she be crucified because she believes her  
15                  husband and not her daughter?

16                  You know, words, people, words, just saying them  
17                  isn't enough. You can say really horrible things but it  
18                  doesn't make it true, right? You can say really horrible  
19                  things but it doesn't make them true. There has got to be  
20                  evidence to support it. Something, something, right? Mom  
21                  heard it all and is here for the defendant. Is here for her  
22                  husband.

23                  It's a tragedy what happened here, ladies and  
24                  gentlemen, tragedy this family got ripped apart at the  
25                  seams. Didn't have to happen.

1                   My client is not guilty of any of these charges.

2                   Thank you.

3                   THE COURT: Thank you, Mr. Bandelli.

4                   Mr. DA, you may proceed.

5                   MR. ROSENBLATT: Thank you, your Honor.

6                   Sana Awan didn't look like someone who was  
7                   sexually abused. Red light. Really, really? What does  
8                   someone who has been sexually abused look like? What does  
9                   that mean? What does he expect her to look like? Does he  
10                  expect her to dress a certain way? Does he expect her to  
11                  look a certain way, to have a certain characteristic about  
12                  her? What about someone who has been sexually abused makes  
13                  them have a characteristic that they look like they have  
14                  been sexually abused?

15                  That is patently offensive. She doesn't look like  
16                  someone who is sexually abused. That's the argument that  
17                  they are making.

18                  You know, let us not forget why we are all here.  
19                  We are here because beginning on a date between May and June  
20                  of 2005, Sana Awan, a fourteen year old girl, an honor  
21                  student then beginning high school was coming out of the  
22                  bathroom, out of the shower that she shared with her family  
23                  when her stepfather, that man (indicating), the man she  
24                  trusted as a father figure, the man she thought she loved,  
25                  came to her in that bathroom and he took off her towel, he

1 forced open her legs and he got on his knees and put his  
2 mouth on her vagina. That's why we are here.

3 And why did he do that? Well, he told you in his  
4 own words, because he thought she looked nice and  
5 attractive. Those were his words. Those were the words he  
6 chose. Those were the words he selected. No one told him  
7 to say that. He just had the urge for it. Those were the  
8 words that he used. Those were the words that he selected.  
9 And he testified -- excuse me -- and he told you on that  
10 video that it just happens. Those are the words that he  
11 used in June of 2008 before he ever knew about the  
12 allegations as they were presented.

13 He used his relationship, he used his authority to  
14 force his stepdaughter to do the things that he wanted and  
15 he told you on that video in June of 2008 before he had an  
16 opportunity to hear or see what Sana was saying, that he  
17 told her it's okay, don't be afraid. She looked scared.  
18 That's what he said. Those are the words that he selected.  
19 Nobody told him to say it that way.

20 When you evaluate the testimony in this case, the  
21 two versions of events are certainly conflicting. Someone  
22 took the stand and lied. Are you going to believe the  
23 defendant? Who has a greater motive to lie than him?

24 The law --

25 MR. BANDELLI: Objection, your Honor.

1 THE COURT: Sustained.

2 MR. ROSENBLATT: The law gives the defendant's  
3 interest in this case a specific title. He is an interested  
4 witness because he is most interested in the outcome --

5 MR. BANDELLI: Objection.

6 MR. ROSENBLATT: -- of this case.

7 MR. BANDELLI: Your Honor.

8 THE COURT: Sustained.

9 MR. ROSENBLATT: His interest?

10 MR. BANDELLI: Ask it be stricken.

11 THE COURT: Jurors, disregard it.

12 MR. ROSENBLATT: His interest is as obvious as it  
13 is great.

14 MR. BANDELLI: Objection, your Honor.

15 THE COURT: Overruled.

16 MR. ROSENBLATT: And the law permits you to  
17 consider that factor, and I ask you to listen to the judge's  
18 instruction when he defines that to you.

19 The defendant is a convicted felon. He has been  
20 convicted of numerous offenses. He doesn't want you to know  
21 that. In fact --

22 MR. BANDELLI: Objection, your Honor.

23 THE COURT: Overruled.

24 MR. ROSENBLATT: -- on direct examination, he  
25 completely omitted that fact, but on cross-examination when

1           asked if he was convicted of numerous offense, he denied it.  
2           Apparently, to him, to this man, five is not numerous. His  
3           testimony is uncorroborated, and when I say that, what I  
4           mean is no evidence in this case supports what he said,  
5           none.

6           Or are you going to believe Sana, because in 2008,  
7           Sana Awan lived at home with her two siblings who she loved,  
8           who she cared about. She no longer sees them, she no longer  
9           has contact with them. In fact, the one time she tried to  
10          get them a small present, candy, it was returned by her own  
11          mother.

12          She was an honor student. She had a home with two  
13          parents. She had her own room and now she is in foster  
14          care, thrown out of her home.

15          MR. BANDELLI: Objection. She is no longer in  
16          foster care.

17          MR. ROSENBLATT: Is he testifying, Judge?

18          THE COURT: Mr. Bandelli, don't make any speeches  
19          in front of the jury.

20          MR. BANDELLI: I understand.

21          Objection.

22          THE COURT: Disregard Mr. Bandelli's statement.

23          Continue.

24          MR. ROSENBLATT: She's placed in foster care,  
25          thrown out of her home, the home that she grew up in, the

1 home where she went to school and studied, where she was  
2 rarely punished, where she followed the rules, never had a  
3 problem with the law or at school.

4 That was Sana Awan in 2008. That's what she gave  
5 up.

6 Or are you going to believe the defendant, a man  
7 who admitted to his own wife that he abused her daughter.  
8 Admitted.

9 MR. BANDELLI: Objection, your Honor.

10 THE COURT: Overruled.

11 MR. ROSENBLATT: Admitted to her that he was sick  
12 and needed help.

13 MR. BANDELLI: Objection, your Honor. There is no  
14 evidence to support that.

15 MR. ROSENBLATT: May I proceed, your Honor?

16 THE COURT: Proceed.

17 MR. ROSENBLATT: A man who claims he was beaten  
18 and abused by the police. A man beaten and abused by the  
19 police, he then wanted to trust them after they threw him  
20 against the wall and did all these things that he claimed  
21 they did.

22 That after they did all those things, he actually  
23 believed them that if he told them, if he told Detective  
24 Shulman and did this video, that was going to go home, that  
25 he was going to walk out of the 105 precinct a free man.

1 For every statement that the defendant made to you  
2 under oath, ask yourself: Is it credible, do I believe it.  
3 And when you consider whether you're willing to believe the  
4 defendant, remember and listen to the judge's charge on  
5 interested witnesses.

6 I submit to you that I have proven the defendant's  
7 guilt of each and every count contained in this indictment  
8 beyond a reasonable doubt. If you were presented one  
9 witness in this case, if you were presented the testimony of  
10 Sana Awan alone and her testimony convinced you beyond a  
11 reasonable doubt to your satisfaction, her testimony alone  
12 is proof that the defendant is guilty of each and every  
13 charge.

20 But you don't only have Sana's name, you don't  
21 only have two written statements, you have a video  
22 statement. On video, under -- excuse me -- all of it  
23 captured on camera, no statements were made to any members  
24 of the district attorney's office that were not videotaped.  
25 And I ask you to look at that and remember what you saw.

1           Did he appear scared? Did he appear nervous? Did he appear  
2           unwilling to testify -- excuse me -- unwilling to speak?  
3           Did he appear intimidated? Did he appear roughed up? No.  
4           He wasn't injured, he wasn't attacked. He told the police,  
5           he told the district attorney's office what he did.

6           We have even more evidence of the defendant's  
7           guilt. You have more than Sana's word, you have more than  
8           two written statements, more than a videotaped statement.

9           You have a knife that was recovered from his car  
10           that was described by Sana that was used inside that car and  
11           in the house.

12           And you have a vibrator that Sana described, was  
13           used in the exact location of where she told the police it  
14           was ultimately recovered.

15           You have even more than her word and two  
16           statements and a videotape and a knife and a vibrator,  
17           because you have her emotionally disclosing to her friend  
18           after years of abuse the man that she called dad abusing  
19           her. And unlike what the defendant wants you to believe  
20           that there is no evidence, there is overwhelming evidence in  
21           this case. The evidence is stacked up against the  
22           defendant, and when you evaluate all of the evidence, all of  
23           the evidence that you have seen and heard, the testimony  
24           that you've seen and heard, don't base arguments on  
25           speculation or a whim. Base things on what there is no

1                   testimony or evidence of.

2                   When you evaluate all of it, rather than pick out  
3                   pieces as the defendant tries to do, it only points to one  
4                   reasonable conclusion, and that is that the defendant was  
5                   sexually abusing his daughter from 2005 through 2008.

6                   You know, notwithstanding the fact that there are  
7                   two conflicting versions of events and someone took the  
8                   stand and lied, there are numerous facts that everybody  
9                   agrees on.

10                  You know there is no dispute as to the fact that  
11                  Sana was born on March 1, 1991 and the abuse began when she  
12                  was fourteen years old. There is no dispute.

13                  The fact that the defendant was born February of  
14                  1958, there is no dispute.

15                  The fact that during that entire time period the  
16                  defendant and Sana both lived inside their home in Bellrose,  
17                  242-10 89th Avenue here in Queens.

18                  And there is no dispute to the fact that that  
19                  videotape, in that videotape, he uses the words, those were  
20                  words that he used on that video. They are there for you to  
21                  evaluate.

22                  And there is no dispute that on June 21st, the  
23                  defendant's hands connected to Sana's body.

24                  There is no dispute that he hit her on the face  
25                  and the arms.

1                   There is no dispute that it caused her to cry and  
2                   she got upset.

3                   There is really only one issue for you to decide  
4                   and that's who do you want to believe. I submit Sana was  
5                   truthful and told you what happened to her from 2005 through  
6                   2008.

7                   Because some of this is not in dispute, I submit  
8                   some of the arguments that the defendant has tried to make  
9                   to you are arguments that are intended to divert your  
10                   attention away from the real issues in this case, and that's  
11                   who testified truthfully. Some things are meant to divert  
12                   your attention from this issue because they play no role, I  
13                   submit, in your deliberations. I submit when you are  
14                   deliberating and somebody brings up one of these  
15                   distractions that I am going to point out to you, that you  
16                   should point out to your fellow juror that it does not help  
17                   you to decide the ultimate issue in this case and that's who  
18                   told the truth.

19                   First thing is the medical records. What does  
20                   that do to help you decide whether Sana told you the truth  
21                   or not; what medical evidence do you expect to see when  
22                   someone's tongue touches somebody else's vagina? What do  
23                   you expect to see in there that? Do you expect the tongue  
24                   to do some sort of horrendous damage that the doctor is  
25                   going to testify to? No, it's common sense.

1 Common sense dictates that when somebody's mouth  
2 is on somebody else's vagina, there is no injury, no injury  
3 in a medical record that's going to point out to any  
4 specific abuse.

11 The setup of the home is another distraction. You  
12 know what is the fact that the rooms are next to each other,  
13 the living room is spread opened. Do you think that when  
14 the defendant was going to abuse his daughter he called the  
15 family down to let them know what was going to happen?  
16 Honey, I'm going to pull my daughter to the basement now and  
17 get on my knees and abuse her. Does that make sense? Is  
18 that reasonable? Defies common sense, it's illogical.

19 And if his argument is illogical, if his argument  
20 is unreasonable, doesn't make sense, push it aside and you  
21 are free to not use that in your deliberations.

22 And again, when someone brings up these medical  
23 records with the ridiculous argument about the setup of the  
24 home, I say, I ask you to tell your fellow juror to pay no  
25 mind to that. It does nothing to help us with the ultimate

1 issue in this case.

2 Finally, the last distraction is this whole  
3 argument about grades. I mean, really, it is so offensive  
4 to say that somebody who has been abused can't do well in  
5 school. I mean really. That is just offensive. Every  
6 traumatic event in somebody's life has a drastic increase --  
7 you are saying at some point in somebody's life somebody is  
8 abused, that all of a sudden the grades drop? It's absurd.  
9 It's absolutely absurd. It is unreasonable. It is  
10 illogical. The argument defies common sense, and if an  
11 argument defies common sense, you are free to push it aside  
12 and not use it.

13 So when you push aside the defendant's  
14 distractions, when you brush aside the things that mean  
15 nothing to the ultimate issue in the case, what is the  
16 ultimate defense? I mean, the defense in this case, the  
17 defense in this case is that every single person who  
18 testified for the People is lying, every single one of them.  
19 Sana, liar; Denise Alioto, liar; Christine Alioto, liar;  
20 Officer Alfaro, liar. Actually, not one person according to  
21 his version of the events testified and told the truth.

22 So before you just call somebody a liar, I ask you  
23 to consider what does that mean? Where does the defense  
24 come from? What evidence is there before you to come to the  
25 conclusion that everybody is lying?

1                   During jury selection and when the judge instructs  
2 you on the law, you were told to not base your verdict on  
3 speculation or whim. That's what he is asking you to do.  
4 That's where this defense comes from.

5                   You know, during the course of this trial the  
6 defendant was -- you were told numerous times he has no  
7 burden, okay? The burden of proof remains on the People,  
8 remains with me the entire case. But they did put on  
9 evidence, and because they did, it's subject to the same  
10 scrutiny as any evidence in the case. It needs to be  
11 analyzed and it needs to be dissected.

12                  And what they had in this case coming into this  
13 courtroom is they had the defendant admitted on paper that  
14 he abused his daughter.

15                  They had coming into the case the defendant  
16 admitting on paper that he physically assaulted her.

17                  They had on coming into this case on video the  
18 defendant molested his daughter.

19                  So the argument here today before you is everybody  
20 is lying. What reason based upon the evidence you've heard,  
21 not based upon whim, not based upon speculation, based upon  
22 the evidence that you heard, what reason on June 23, 2008  
23 when her mother goes to sleep, when Sana's siblings are in  
24 bed, what reason does she have to call her friend, her best  
25 friend, and tell her that she is being molested? What

1 reason? What reason does she have to call her friend's  
2 mother -- excuse me, not call her friend's mother -- ask to  
3 speak to her friend's mother and tell her that she is being  
4 molested and her father plans to rape her? There is no  
5 reason. There is no evidence before you to reach that  
6 conclusion.

7 What evidence before you leads you to conclude  
8 that a 17 year old girl with a family with financial  
9 support, doing well in school, is going to rip apart her  
10 life, walk into a precinct and tell a police officer, tell a  
11 detective, tell members of the district attorney's office,  
12 then go to the hospital and tell everyone that she is being  
13 orally sodomized by her father?

14 What reason would Sana go into a grand jury and  
15 testify in front of complete strangers that her father  
16 forced her to engage in these acts? There is none.

17 What reason would she have to come back then  
18 before you, in front of a roomful of strangers, in front of  
19 her own stepfather, subject herself to cross-examination?  
20 What reason, why would she have to do that? There is no  
21 reason whatsoever that you have heard. There is no reason.  
22 There is no evidence to suggest that she is the type of  
23 person who would make up this allegation.

24 I mean, use your common sense and your life  
25 experiences. What's the type of person who comes before a

1 group of strangers, the police, and makes up, intentionally  
2 lies about being abused by her stepfather? Who is that type  
3 of person? That person would have to be so sick, so  
4 sinister, so despicable, so screwed up in the head, that's  
5 the type of person who would make that up.

6 What kind of hatred, what kind of animosity does  
7 somebody have to make that up against their stepfather.

8 And compare that to the testimony and the evidence  
9 you heard in this case about Sana Awan. She did well in  
10 school, she didn't do drugs, she didn't drink alcohol, she  
11 behaved. She has no motivation to lie. She gains nothing  
12 from being here, she receives no benefit.

13 You know, evaluate again, when you consider the  
14 motivation to lie, that she has none, with what she gave up  
15 and what she got now. She gave up vacations, she gave up  
16 trips, she gave up the life living with siblings whom she  
17 loved, whom she cared about who she now never sees, no  
18 contact whatsoever. They provided her food, her family  
19 provided her shelter. They provided her a cell phone and  
20 insurance and she took that and she gave all of it up and  
21 went into foster care. Why? There is no evidence before  
22 you to suggest that she is this type of person.

23 And evaluate Sana Awan now. She is 19 years old,  
24 and when she first made this -- when she first told the  
25 police about the allegations about her stepfather, she was

1           17. Use your common sense. Use your life experience. What  
2           are the things that a girl between the ages of 17 and 19 are  
3           concerned about? They are concerned about things that any  
4           teen-ager is concerned about; their clothing, their hair;  
5           how they appear in front of their friends; their  
6           self-consciousness.

7                   What did Sana Awan do? She took all of the  
8           self-conscious thoughts that a normal child has and is  
9           forced to express over and over again that her father is  
10           putting his mouth on her vagina. Putting his hand down her  
11           pants, putting his hand up her shirt. She is forced to  
12           suffer the embarrassment of telling men detectives, female  
13           officers, doctors; for what? For what purpose? There is no  
14           evidence to suggest that she has any reason to do it.

15                   And then maintain the allegations because what he  
16           is saying is true, she has maintained this lie since June of  
17           '08. She is out of the house. It's not a runaway train.

18                   If at any point in time the allegations were  
19           false, she comes over to the district attorney's office and  
20           says, it's all false, it's a lie, I made it up. But she  
21           continues to testify before a grand jury, she continues to  
22           testify before you for two years. That's the girl they want  
23           you to believe is a liar.

24                   You know, she told you the first time she ever  
25           received any sort of gynecological exam, and for the men,

1 ask the women about the invasiveness of this type of an  
2 exam. This is a girl who had never been to that type of  
3 doctor, but in June of 2008 after running out of her house  
4 to her friend's car for safety, after being questioned by  
5 the detectives and the police, she is brought to a hospital  
6 to a doctor she has never met or seen, a doctor -- she told  
7 you, she didn't choose, her knees are pressed up towards  
8 where her ears are, and a doctor who she has never met is  
9 examining her genitalia. That's what this girl chose to do?  
10 For what? For what purpose? What does she get out of that?

11 You know, at some point on June 24, 2008 after  
12 midnight when everybody starts coming down, any time  
13 Detective Shulman, Officer Alfaro, Assistant District  
14 Attorney Hughes, the doctors, at any time, she just needed  
15 to say: You got me, but she didn't, she continues to tell  
16 you the truth.

17 You know, maybe when the doctors have her in the  
18 gynecological exam, that may have been the whole time, she  
19 may have wanted to point out that it wasn't true. But she  
20 didn't. In order for you to believe that these allegations  
21 were made up, you have to believe she is a sick, despicable  
22 human being.

23 And why say sex? You know, if the argument by the  
24 defendant is that she made it up because she wanted a boy,  
25 she liked a boy, she had bruising on her arms, all she

1         needed to say is my dad hit me. All she needed to say is my  
2         dad beat me up and she is out, she gets what they say she  
3         wanted.

4                 Why does she pick the most embarrassing,  
5         humiliating personal topic to talk about with members of the  
6         police to you? Why talk about sex?

7                 She tells the police that she is abused because  
8         for the last three years she was abused. Their defense  
9         doesn't make sense. Their defense is unreasonable, the  
10        arguments are illogical. It defies common sense. It's not  
11        a reason to doubt the People's witnesses. She was not the  
12        cold, calculating liar that I submit the defendant portrays  
13        her to be.

14                 She is able to recall the events, in fact some of  
15        the events which you are going to be asked to reach a  
16        verdict on are the ones she specifically recalls. She told  
17        you there were other events that occurred that were  
18        continuous, that happened over time that she can't tell you  
19        specific incidents.

20                 MR. BANDELLI: Objection, your Honor.

21                 THE COURT: What's the basis of your objection?

22                 MR. BANDELLI: Talking about stuff that's not  
23        going to be charged in the case.

24                 MR. ROSENBLATT: Talking about the testimony,  
25        Judge.

1 MR. BANDELLI: Saying there is --

2 THE COURT: Ladies and gentlemen, it's your  
3 recollection of the testimony that counts, not what either  
4 side of the case says.

5 And if your recollection should fail, you can have  
6 everything read back to you as you wish.

7 Proceed.

8 MR. ROSENBLATT: Thank you, your Honor.

9 She told you some of these acts she has no  
10 specific recollection about. I submit to you when you  
11 evaluate her testimony, you'll find it plausible, truthful.  
12 I submit that her testimony was consistent with the other  
13 witnesses in the case, that when you evaluate her  
14 credibility, she has no bias, no hostility, no anger, no  
15 motivation to lie, no reason to distort the truth. Her  
16 testimony was consistent over time. She wasn't impeached  
17 with any inconsistencies.

18 These are factors which you as jurors can use when  
19 evaluating credibility of witnesses. These two stories, the  
20 defendant's version of events and what Sana and what  
21 happened to Sana are certainly conflicting.

22 I submit to you that when the defendant presented  
23 witnesses, they contradicted each other. The defendant made  
24 a decision as he pointed out, to call Jenny Gopaul, the  
25 defendant's wife. She wasn't my witness, she was his. It

1 was his decision to call her.

2                   And as the judge will instruct you, I am free to  
3 call as many or as few witnesses as I choose, but this was  
4 the defendant's position, presumably they called her because  
5 she had to provide information to help him. Well, boy, did  
6 that backfire, because even the defendant's own wife told  
7 you he confessed to her. She continued to argue with him  
8 over time about the fact.

9                   MR. BANDELLI: Objection to this part of  
10 summation, Judge.

11                  THE COURT: Overruled.

12                  MR. ROSENBLATT: That he confessed to her. She  
13 continued to press him after June 24th, the day he confessed  
14 to her. She continued to talk to him after he confessed to  
15 her into 2009. He was her financial support. He provided  
16 the income, he paid the mortgage, he paid the bills. When  
17 you consider her testimony regarding the day her husband was  
18 arrested, I ask you to remember the questions and the  
19 answers that she claims she didn't remember, because when  
20 she was questioned on cross-examination about whether she  
21 remembered whether her husband admitted to her that her  
22 daughter was abused, she was asked whether she remembered  
23 the day her husband confessed to her that he molested his  
24 daughter --

25                  MR. BANDELLI: Again, note my objection to this

1 part of the summation, Judge.

2 THE COURT: Overruled.

3 MR. ROSENBLATT: And she (indicating) told you she  
4 didn't remember. She didn't remember. She didn't remember  
5 the day her husband admitted to her that he molested her  
6 daughter.

7 In her own words: So you would agree with me,  
8 that on June 24, 2008, the defendant admitted to you that he  
9 abused his daughter Sana, correct?

10 "ANSWER: Yes."

11 Under oath.

12 On June -- excuse me -- Mr. Gopaul admitted on  
13 cross-examination on July 10th of 2009, Ms. Gopaul, she told  
14 the defendant he cannot return to her home because he  
15 molested Sana. Now at first, she denied it. Then she  
16 denied taking her to her husband's attorney's office  
17 claiming that she couldn't leave her 17 year old daughter at  
18 home alone. 17 year old and she couldn't be left at home  
19 when she went to his lawyer's office? She couldn't be left  
20 at home alone because she wanted to bring her daughter to  
21 the lawyer's office to get her husband back to get the  
22 income back. Her testimony was offensive. She took her  
23 husband's side the day after Sana told the police she was  
24 molested. That's the type of person that they called.  
25 That's the type of person that Sana couldn't trust. That's

1 the type of person that Sana described to you that she  
2 didn't want to tell about the abuse.

3 So when you're examining why Sana wouldn't want to  
4 tell her mom? That's why (indicating). And she also told  
5 you because she wasn't aware of what defendant's story was,  
6 that he left the home.

7 MR. BANDELLI: Objection to defendant's story.

8 THE COURT: Sustained.

9 MR. ROSENBLATT: The defendant's -- what the  
10 defendant's testimony would be that he left the home between  
11 3:30 and 4:00 in the morning, well, that's in direct  
12 contradiction to what the defendant wants you to believe.  
13 In fact, if he leaves the house at 3:30 to 4:00 in the  
14 morning, it corroborates everything that DA told you she  
15 saw.

16 Defendant testified last. He sat and listened to  
17 each and every witness. He heard all of the evidence, he  
18 reviewed every document, he was the witness who heard every  
19 other person's testimony. He is the only one who did that.  
20 And after doing that, he chose to testify that was his  
21 decision. And when your wife can't do the job for you,  
22 apparently he needed to finish it for himself. His plan to  
23 distort the truth to you backfired because his statement to  
24 you is so patently illogical, is so patently unreasonable  
25 that it defies common sense.

1                   When -- excuse me -- when given the opportunity to  
2 testify, when given the opportunity to take the stand, he  
3 chose to admit one major piece, one major piece he never  
4 wanted to explain and that's the decision to admit to his  
5 wife on June 24th that he molested his daughter. He chose  
6 to not provide you with that information.

7                   MR. BANDELLI: Objection, your Honor.

8                   THE COURT: Sustained.

9                   MR. ROSENBLATT: After being forced to sign  
10 documents, according to the defendant's version of events,  
11 he you wants to believe that by confessing to touching her  
12 daughter's breasts to forcing his hand down her pants to  
13 forcing her to touch his penis, that he is going to be let  
14 go.

15                   What? In what civilized society, in what country,  
16 in what democracy would we have an individual walk into a  
17 precinct, tell the police that they are abusing their  
18 stepdaughter and then be escorted out the front door and  
19 told have a nice day? Mr. Gopaul, thanks for telling us  
20 about the abuse between you and your stepdaughter. It is  
21 absurd. It is so absurd it defies every logic that we have  
22 as people. It defies common sense, it defies life  
23 experience.

24                   You know, when you compare the testimony of  
25 Mrs. Gopaul to the testimony of Sana, when Sana told you I

1 don't think I can confide in her, I didn't know whether she  
2 would believe me, Sana was dead right. All of her fears,  
3 all of her concerns about ever disclosing it to her mother  
4 about what would she do would, she confronts the defendant,  
5 would he deny it, would he just say it didn't happen then  
6 she would be forced to live there?

7 It all became reality. She chose to ostracize her  
8 daughter. She chose to kick her out of the house. She  
9 chose to dump her belongings on the street. She chose to  
10 not cooperate with CPS, Child Protection, she refused to  
11 give her own sister and brother candy she wanted to give  
12 her. That's the type of person defendant chose to marry.

13 And you can use those things when you evaluate the  
14 testimony, and notwithstanding all of those things about  
15 what the mother did and who she was, never did Sana make an  
16 allegation against her. The person that she didn't confide  
17 in, the person that didn't help her, the person who she had  
18 no real relationship with in her house, there is not an  
19 allegation against her. Never was one. So if she is making  
20 up answers because she doesn't like her mom and dad because  
21 she wants a more free way about her life, why did she point,  
22 pick the guy who actually cared about her? Because the  
23 defendant was the one who was abusing her.

24 When you evaluate what's consistent, when you  
25 evaluate what makes sense, when you evaluate what's

1 reasonable, I submit to you that I have proven the  
2 defendant's guilt beyond any reasonable doubt.

3 Sana told you what she remembered and what she  
4 didn't. She told you the specific acts that she recovered,  
5 and she did her best to point out the time periods, in fact  
6 because it happened over such a period of time, you were  
7 presented with the testimony of Dr. Lewittes.

8 Dr. Lewittes, you are free to accept or reject his  
9 testimony just like any other witness. But he was brought  
10 in to help explain the dynamics, what happens in adolescent  
11 sexual abuse. Because this is so unique, it is so  
12 different, because things weren't what we normally expect,  
13 and I submit he explained to you the reasons why somebody  
14 who has been the victim of abuse can't remember every single  
15 act, why the acts blend together, why when they occur  
16 together, why they blend together, why it's more common to  
17 remember the first act, the specific details which Sana did  
18 between -- excuse me -- between May of 2000 and June of 2005  
19 in the shower.

20 When you examine all of the evidence, when you  
21 examine Sana's testimony, when you compare it to this  
22 videotaped confession which -- let me point out one thing  
23 and I am almost done, so just bear with me -- according to  
24 the defendant, Detective Shulman told him what to say; in  
25 fact, he provided the words. But the words provided on the

1 video are touching.

2 If Detective Shulman was going to tell the  
3 defendant the words to say, why didn't he tell them to use  
4 the words "lick it," because that's what Sana was saying in  
5 the precinct, to the grand jury, in the hospital. Sana is  
6 telling everybody all along, he touched me and he licked me.  
7 So if the defendant is this big ogre, this big bruiser who  
8 is setting up this confession, why not get all of it? I  
9 submit to you the defendant tried to minimize his  
10 responsibilities on that tape and that's why during opening  
11 statement and now again, I indicate to you the defendant's  
12 admissions on that tape are not completely truthful because  
13 he tried to minimize his responsibility on camera. He tried  
14 to minimize his responsibility to the police.

15 So I ask you not to just accept the fact that Sana  
16 was touched, she was licked by the defendant as well. Those  
17 words by the defendant on this video are his words and  
18 that's how you know, because if it was in fact a forced  
19 confession, then they would have told him to say he forced  
20 her -- excuse me, he forceably licked her vagina.

21 When you analyze all the testimony, when you  
22 evaluate the testimony of Assistant District Attorney  
23 Hughes, Officer Alfaro or Christine and Denise Alioto, all  
24 of this corroborates Sana's story.

25 When the judge charges you on the law, I want you

1 to pay attention to the charges he is going to present to  
2 you. I want to go through them quickly, so I want you to  
3 understand what evidence is proven, each count.

4 When you listen to the first six counts, charge of  
5 criminal sexual act in the first degree, listen when the  
6 judge instructs you on the law on those counts. Those  
7 counts require force, right? I submit to you that the  
8 testimony as described by Sana make out each force;  
9 specifically, the first act between May and June of 2005,  
10 that's count one. The incident Sana described inside the  
11 bathroom when he removed her towel and forced open her legs.

12 Count two applies to the specific incident that  
13 Sana described in May of 2006 when she was inside her room  
14 and the defendant forced his mouth on her vagina.

15 Count three applies to the specific incident  
16 between January, February of 2008 Sana described to you when  
17 she tried to go upstairs, defendant forced her to watch  
18 porn, held her on his lap, forced his mouth on her vagina.  
19 When you listen to the judge's instruction on count four,  
20 that applies to the incident that she described in March of  
21 2008 sometime after her birthday that she told you she  
22 remembered when she was told to come into the dining room  
23 and he forced her down on the floor.

24 When you listen to count five, that's the count  
25 that applied to the specific incident described in April of

1 2008 when her mother was gardening outside and she was  
2 forced to go downstairs and the defendant forced his mouth  
3 on her vagina next to the freezer.

4 Count six applies to the specific incident she  
5 described in May of 2008 where the defendant was sharpening  
6 the knife that you saw in evidence inside the kitchen and he  
7 told her she was going to force some utensil up her vagina  
8 if she didn't comply.

9 That's counts one through six, all requiring six,  
10 that's his mouth to her vagina.

11 Count seven and eight charges defendant with  
12 sexual abuse in the first degree. Those are specific  
13 charges for his forcing his hand on to her vagina. The law  
14 doesn't require her -- excuse me -- the law doesn't require  
15 his finger to be inserted into a vagina, the law only  
16 requires that I prove to you that he forced his hand to  
17 touch her vagina and did he that for the purpose of  
18 satisfying his sexual desires.

19 Count seven applies to the incident between  
20 January and February of '08, the corner incident.

21 Count eight is the June 2008 incident that she  
22 described during the last month when she was inside her room  
23 and defendant came into her room when she was under the  
24 covers.

25 Counts nine through eleven charges defendant with

1 sexual abuse in the second degree, but this time under the  
2 theory he forced his hand to her breasts, that's his hand  
3 touching her breasts. Count nine applies to the incident  
4 between January and February with the porn.

5 Count ten applies to the incident in June of 2008  
6 in the bedroom.

7 Count eleven applies to the act, the specific act  
8 described in May of 2008 in the car on Commonwealth  
9 Boulevard when she was on her way to school and the  
10 defendant told her he wanted her to engage in oral sex and  
11 she refused, then the defendant threatened her to cut off  
12 the finger with the knife that's in evidence, he then forced  
13 his hand on to her breast.

14 Count twelve charges the defendant with sexual  
15 abuse in the first degree, forcing Sana to touch his penis  
16 in the kitchen as described by her in May of 2008.

17 Now counts thirteen through fifteen apply to  
18 criminal sexual act, but these are statutory crimes.

19 Thirteen --

20 MR. BANDELLI: Objection, Judge.

21 THE COURT: Sustained.

22 MR. ROSENBLATT: Count thirteen charges the  
23 defendant with criminal sexual act in the second degree,  
24 that's his mouth to her vagina, but this requires no force.

25 MR. BANDELLI: Objection, your Honor.

1 THE COURT: Mr. DA, I'll charge the jury on the  
2 law.

3 MR. ROSENBLATT: Yes, your Honor.

4 Listen to the judge's instructions when he  
5 compares -- excuse me -- when he tells you the law as it  
6 applies to criminal sexual act second and third and how it's  
7 different than the first degree, because count thirteen  
8 applies to the first incident when Sana was fourteen years  
9 old and the defendant was where --

10 MR. BANDELLI: Objection, your Honor.

11 THE COURT: What's the basis of the objection?

12 MR. BANDELLI: I thought it was the role of the  
13 Court to go through the counts and the elements of the  
14 counts and charge them on the law.

15 THE COURT: Overruled.

16 MR. ROSENBLATT: During that first incident, Sana  
17 was fourteen years old and the defendant was greater than  
18 eighteen, and on that date, that's the count that applies to  
19 the ages. Listen to the judge's instructions.

Counts fourteen and fifteen charge the defendant with criminal sexual act in the third degree, that is his mouth to her vagina. Listen to the judge's specific instruction on how criminal sexual act in the third degree differs from second and first degree.

25 During these two counts, Sana was under the age of

1 17 and the defendant was over the age of 21.

2 Count 16 charges the defendant with assault in the  
3 third degree. That charge applies to the defendant when he  
4 assaulted Sana inside their home, assaulted her so bad that  
5 his own wife had to tell him to stop. He was so angry that  
6 Ms. Gopaul was actually even more upset on that issue.

7 And count 17 charges the defendant with  
8 endangering the welfare of a child.

9 Members of the jury, soon you're going to go back  
10 to the jury room and you're going to deliberate. And when  
11 you go back there, I ask you to remember how the defendant  
12 used his role as her father, how he took advantage of the  
13 fact it was his own daughter, how he used his power.

14 Remember how he took advantage of the time that he had  
15 alone, the limited time he had and how he needed to hurry  
16 through those events because other people were around. The  
17 defendant violated the trust placed in him by his own wife.  
18 He was a grown man, he was Sana's stepfather, he betrayed  
19 the trust in him to satisfy his sexual desires.

20 When you go back to that jury room, remember how  
21 every piece of testimony that you heard from Sana Awan is  
22 corroborated. Remember how the defendant confessed not only  
23 on video to the police but to his own wife. The defendant  
24 began to find his stepdaughter attractive and he could not  
25 help himself.

1 Tell the defendant by your verdict that you know  
2 what he did. Tell him that you know he forced his mouth and  
3 his hands on Sana's vagina and tell him with your verdict  
4 that you know he forced his hand down her pants. Tell the  
5 defendant with your verdict that you know that he forced  
6 Sana to touch his penis, and when you do that, when you  
7 return a verdict, when you return the only fair and just  
8 verdict, the only verdict consistent with the evidence free  
9 from a whim or speculation, you'll find the defendant guilty  
10 of each and every charge that he is charged with.

11 Thank you.

12 THE COURT: Thank you, Mr. DA.

23 (Whereupon, the jury exited the courtroom and the  
24 following occurred:)

25 THE COURT: Take a five minute recess.

1 Put the defendant back in.

2 (Whereupon, a recess was taken, after which the  
3 following occurred.)

4 (Whereupon, the jury entered the courtroom and  
5 upon taking their respective seats, the following occurred:)

6 THE CLERK: Case on trial. All parties present,  
7 your Honor.

10 MR. ROSENBLATT: Yes.

11 MR. BANDELLI: Yes, so stipulated.

16 My charge on the law is divided into two principle  
17 parts; the first one is the rules applicable to criminal  
18 trials in general, and the second part of my charge is  
19 applicable to the charges in the indictment.

20 As I have previously stated, an indictment is not  
21 evidence. It's merely the device required by law to inform  
22 the defendant of the charges against him and to bring such  
23 charges to trial as we have done here.

24 You and I are sitting here together as judges.  
25 You are the judges of the fact and I as the judge of the

1 law. You as jurors and I as the Court have individual  
2 responsibilities in seeing that a just result is reached  
3 both on the law and on the facts.

4 The first and most important principle for you as  
5 jurors to remember is that you are the sole and exclusive  
6 judges of the facts in this case. In that capacity, you  
7 will decide the facts coolly, calmly and deliberately  
8 without fear or favor or passion or prejudice or sympathy,  
9 and solely on the evidence submitted during the trial and  
10 pass judgment upon, if in determination of all the issues,  
11 you must not under any circumstances indulge in any  
12 speculation. You must not under any circumstances indulge  
13 in any guesswork.

14 In other words, don't try to be detectives. Don't  
15 try to conjecture what you would do or what should have been  
16 done or what could have been done or what might have been  
17 done. Your own recollection, understanding and evaluation  
18 of the facts presented as evidence at this trial is what  
19 controls regardless of what counsel on either side of the  
20 case may say about the facts and regardless of what I may  
21 say about the facts. I have no power to tell you what the  
22 facts are, to tell you that one fact is more important than  
23 another. Those are all matters within your own and  
24 exclusive power as judge of the facts.

25 You are not bound to accept the arguments of

1                   respective counsel. If you find that any argument by either  
2                   of them is reasonable and logical based upon the evidence as  
3                   you recall it and is consistent with that, then you are free  
4                   to accept that argument as your own and give it as much  
5                   weight as you deem advisable.

6                   On the other hand, if you find that any argument  
7                   or conclusion is not based upon the evidence or that it is  
8                   unreasonable, illogical or inconsistent with the evidence,  
9                   you may disregard it entirely.

10                  As to the law of the case, however, you as jurors  
11                  must not set up your own preconceived notions of what the  
12                  law should be. You must accept the law as I'm giving it to  
13                  you without reservation and you must apply the law as I am  
14                  giving it to you for your guidance in determination of all  
15                  the issues here.

16                  During the course of the trial I have denied  
17                  motions made by the People and by the defense. Such rulings  
18                  have been matters of law only. You are not to speculate on  
19                  my rulings. They were made concerning the rules of  
20                  evidence.

21                  Each and every one of you has it within your power  
22                  to draw proper, reasonable and just inferences from the  
23                  testimony and the exhibits in evidence and to determine the  
24                  probabilities arising from the case after carefully  
25                  analyzing, weighing and considering the testimony of each

1 witness who has testified at this trial.

2 Since you are the exclusive judges of the facts,  
3 you have a duty to evaluate the testimony. It's your duty  
4 to sort out what you believe to be the credible testimony  
5 and to disregard any testimony you do not consider credible.

6 During the course of the trial, instances may have  
7 occurred which you were instructed to disregard, and at  
8 times questions were asked to which objections were  
9 interposed and which I sustained. You must not be  
10 influenced by them nor shall you draw any inference with  
11 respect to any of them.

12 As I told you in the beginning of the case,  
13 questions in and of themselves are not evidence. It's the  
14 answers coupled with the question that constitutes evidence  
15 in this case. Any inference confined in the question are  
16 not to be considered facts unless the answer confirms that  
17 inference. When you judge the facts, you are to consider  
18 only the evidence and the evidence in this case consisted of  
19 the testimony of the witnesses and any exhibits that were  
20 received in evidence.

21 Testimony which was stricken from the record or to  
22 which an objection was sustained must be disregarded by you.  
23 Exhibits that were received in evidence are available upon  
24 your request for your inspection and your consideration in  
25 the jury room as you start to deliberate.

1                   As judge of the facts, you alone determine the  
2                   truthfulness and accuracy of the testimony of each witness.  
3                   You must decide whether a witness told the truth and was  
4                   accurate; or instead was mistaken or testified falsely.

5                   You must also decide what importance to give to  
6                   the testimony you accept as truthful and accurate. It's the  
7                   quality of the testimony that's controlling, not the number  
8                   of witnesses. The testimony of one witness, if you find  
9                   such testimony credible and you are satisfied from that  
10                  testimony and from all of the evidence offered of the  
11                  defendant's guilt beyond a reasonable doubt, it may be  
12                  sufficient to convict a defendant.

13                  If you find that any witness has intentionally  
14                  testified falsely as to any material fact, you must  
15                  disregard that witness's entire testimony; or you may  
16                  disregard so much of it as you find untruthful and accept so  
17                  much of it as you find to be truthfully and accurately  
18                  given.

19                  There is no particular formula for evaluating the  
20                  truthfulness and accuracy of another person's statements or  
21                  testimony. You bring to this process all of your varied  
22                  experiences. In life, you frequently decide the  
23                  truthfulness and accuracy of statements made to you by other  
24                  people. The same factors used to make those decisions  
25                  should be used in this case when evaluating the testimony

1 that you heard.

2                   Some of the factors that you may wish to consider  
3                   in evaluating the testimony of a witness is as follows: Did  
4                   the witness have an opportunity to see or hear the events  
5                   about which he or she testified; did the witness have the  
6                   ability to recall those events accurately; was the testimony  
7                   of the witness plausible and likely to be true, or was it  
8                   implausible and not likely to be true; was the testimony of  
9                   the witness consistent or inconsistent with other testimony  
10                   or evidence in this case; did the manner in which the  
11                   witness testified reflect upon the truthfulness of that  
12                   witness's testimony; to what extent, if any, with the  
13                   witnesses' training, background or experience affect the  
14                   believability of that witness's testimony; did the witness  
15                   have a bias, hostility or some other attitude that effected  
16                   the truthfulness of that witness's testimony.

17                   You may consider whether a witness did or did not  
18                   have a motive to lie; if a witness had a motive to lie, you  
19                   may consider whether and to what extent if any that motive  
20                   effected the truthfulness of that witness's testimony. If a  
21                   witness did not have a motive to lie, you may consider that  
22                   as well in evaluating the witness's truthfulness.

23                   You may consider whether a witness made statements  
24                   at this trial that are inconsistent with each other; you may  
25                   also consider whether a witness made previous statements

1                   that are inconsistent with his or her testimony here; you  
2                   may consider whether a witness testified to a fact here at  
3                   trial that the witness omitted to state at a prior time when  
4                   it would have been reasonable and logical for the witness to  
5                   have stated the fact.

6                   In determining whether it would have been  
7                   reasonable and logical for the witness to have stated the  
8                   omitted fact, you may consider whether the witness's  
9                   attention was called to the matter and whether the witness  
10                  was specifically asked about it.

11                  If the witness has made inconsistent statements,  
12                  you may consider whether and to what extent the effect the  
13                  truthfulness or accuracy of that witness's testimony has  
14                  here at this trial.

15                  The contents of a prior inconsistent statement are  
16                  not proof of what happened. You may use evidence of a prior  
17                  inconsistent statement only to evaluate the truthfulness or  
18                  accuracy of the witness's testimony here at this trial. You  
19                  may consider whether a witness's testimony is consistent  
20                  with the testimony of other witnesses or with other evidence  
21                  in this case. If there were inconsistencies by one witness,  
22                  you may consider whether they were significant  
23                  inconsistencies related to important facts or instead were  
24                  minor inconsistencies.

25                  In this case, you heard the testimony of police

1                   officers. The testimony of a witness should not be believed  
2                   solely and simply because the witness is a police officer.  
3                   At the same time, a witness's testimony should not be  
4                   disbelieved solely and simply because the witness is a  
5                   police officer. You must evaluate a police officer's  
6                   testimony in the same way you would evaluate the testimony  
7                   of any other witness.

8                   You will recall that Dr. Don Lewittes, an expert  
9                   in the field of clinical psychology and adolescent sexual  
10                  abuse, testified about certain technical matters and gave an  
11                  opinion on such matters.

12                  Ordinarily, a witness is limited to testifying  
13                  about facts and is not permitted to give an opinion. Where,  
14                  however, scientific, technical or other specialized  
15                  knowledge will help the jury understand the evidence or to  
16                  determine a fact in issue, a witness with expertise in a  
17                  specialized field may render opinions about such matters.  
18                  You should evaluate the testimony of any such witness just  
19                  as you would the testimony of any other witness. You may  
20                  accept or reject such testimony in whole or in part just as  
21                  you may with respect to the testimony of any other witness.

22                  In deciding whether or not to accept such  
23                  testimony, you should consider the following: The  
24                  qualifications and believability of the witness; the facts  
25                  and other circumstances upon which the witness's opinion was

1                   based; the reasons given for the witness's opinion; and  
2                   whether the witness's opinion is consistent or inconsistent  
3                   with other evidence in this case.

4                   I will now discuss the law as it relates to  
5                   testimony concerning the defendant's statements made to  
6                   police officers.

7                   Our law does not require that a statement by a  
8                   defendant be in any particular form; it may be oral, written  
9                   or electronically recorded. A statement in written form  
10                  need not have been written or signed by the defendant  
11                  provided that the defendant adopted the statement. A  
12                  defendant adopts a statement when he knowingly acknowledges  
13                  the contents of the statement as his own.

14                  In deciding whether the statement was adopted, the  
15                  presence or absence of the defendant's signature may be  
16                  considered. There is no requirement that a statement be  
17                  under oath.

18                  There is testimony that while the defendant was in  
19                  custody, the police asked him what we call pedigree  
20                  questions concerning matters relating to his name, address,  
21                  date of birth, et cetera.

22                  Under our law, a police officer may ask those  
23                  questions of a person who is in custody and the officer is  
24                  not required to advise the defendant of his rights before  
25                  doing so; thus, if you find the defendant made such

1 statements, you may consider them in your evaluation of the  
2 evidence. In determining whether the statement was made,  
3 you can apply the tests of truthfulness, accuracy that we  
4 have already discussed.

5 There is testimony that while the defendant was in  
6 custody he was questioned by the police and made an oral,  
7 written and videotaped statement. Under our law, before you  
8 may consider any such statement as evidence in the case, you  
9 must first be convinced that the statement attributed to the  
10 defendant was in fact made by him. In determining whether  
11 the defendant made the statement, you may apply the tests of  
12 believability and accuracy that we have already discussed.

13 Also, under our law, even if you find the  
14 defendant made a statement, you still may not consider it as  
15 evidence in the case unless the People have proven beyond a  
16 reasonable doubt that the defendant made the statement  
17 voluntarily.

18 How do you determine whether the People have  
19 proven beyond a reasonable doubt the defendant made a  
20 statement voluntarily? Initially, under our law, before a  
21 person is in custody may be questioned by the police. That  
22 person first must be advised of his rights; second, must  
23 understand those rights; third, must voluntarily waive the  
24 rights and agree to speak to the police. If any one of  
25 those three conditions are not met, the statement made in

1 response to questions is not voluntary; therefore, you must  
2 not consider it.

3 There is no particular point in time that the  
4 police are required to advise the defendant in custody of  
5 his rights as long as they do so before questioning begins.  
6 A defendant in custody need be advised only once of the  
7 rights regardless of how many times or to whom the defendant  
8 speaks after having been so advised provided that the  
9 defendant is in continuous custody from the time he was  
10 advised of his rights to the time he was questioned and  
11 there was no reason to believe that the defendant had  
12 forgotten or no longer understood his rights.

13 While there is no particular words that the police  
14 are required to use in advising a defendant, in sum and  
15 substance, the defendant must be advised: One, that he has  
16 a right to remain silent; two, that anything he may say may  
17 be used against him in a court of law; three, he has a right  
18 to consult with a lawyer before answering any questions and  
19 the right to the presence of a lawyer during the questions;  
20 and four, that if he cannot afford a lawyer, one will be  
21 provided for him prior to any questioning if he so desires.

22 Before you may consider his the statement made by  
23 defendant in response to questioning, you must find beyond a  
24 reasonable doubt that the defendant was advised of his  
25 rights, understood those rights, and voluntarily waived

1           those rights and agreed to speak to the police. If you do  
2           not make those findings, then you must disregard the  
3           statement and not consider it.

4           Under our law, a statement is not voluntary if it  
5           is obtained from the defendant by the use of threatened use  
6           of physical force.

7           In addition, a statement is not voluntary if it is  
8           obtained by any improper conduct or undue pressure which  
9           impairs the defendant's physical or mental condition to the  
10           extent of undermining his ability to make a choice or  
11           whether or not to make a statement.

12           In considering whether a statement was obtained by  
13           means of any improper conduct or undue pressure which  
14           impaired the defendant's physical or mental condition to the  
15           extent of undermining his ability to make a choice of  
16           whether or not to make a statement, you may consider such  
17           factors as the defendant's age, intelligence, physical and  
18           mental condition and conduct of the police during their  
19           contact with the defendant; including, of course, the number  
20           of officers who questioned the defendant, the manner in  
21           which the defendant was questioned, the defendant's  
22           treatment during the period of detention and questioning,  
23           and the length of time defendant was questioned.

24           It is for you to evaluate and weigh the various  
25           factors to determine whether in the end a statement was

1                   obtained by means of any improper conduct or undue pressure  
2                   which impaired the defendant's physical and mental condition  
3                   to the extent of undermining his ability to make a choice of  
4                   whether or not to make a statement.

5                   Under our law, a statement of the defendant is not  
6                   voluntary made when it is obtained by the defendant by a  
7                   public servant engaged in law enforcement activity by means  
8                   of any promise or statement of fact which promise or  
9                   statement creates a substantial risk that the defendant  
10                  might also incriminate himself.

11                  Under that law, promise or statement of fact made  
12                  to a defendant does not by itself render the defendant's  
13                  subsequent statement involuntary. The defendant's statement  
14                  would be involuntary only if the promise or statement made  
15                  to him created a substantial risk that he might falsely  
16                  incriminate himself.

17                  Therefore, if the People have not proven beyond a  
18                  reasonable doubt the statement of the defendant was  
19                  voluntarily made, then you must disregard the statement and  
20                  not consider it. If the People have proven beyond a  
21                  reasonable doubt the statement of the defendant was  
22                  voluntarily made, then you may consider that statement as  
23                  evidence in evaluating it as you would any other evidence.

24                  You may have heard testimony that the DA or  
25                  defense attorney spoke to a witness about the case before

1 the witness testified at trial.

2 The law does not prohibit a DA or defense attorney  
3 from speaking to a witness about the case before the witness  
4 testifies, nor does it prohibit the DA or defense counsel  
5 from reviewing with the witness the questions that would be  
6 asked at the trial.

7 You may also have heard testimony that a witness  
8 read certain materials pertaining to the case before the  
9 witness testified. The law does not prohibit a witness from  
10 doing so.

11 Although not required to do so, the defendant in  
12 this case testified in his own behalf. His testimony should  
13 be considered by you as you would the testimony of any other  
14 witness.

15 A defendant is, of course, an interested witness,  
16 interested in the outcome of this trial. You may as jurors  
17 wish to keep such interest in mind in determining the weight  
18 and credibility to be given to his testimony. You should  
19 not, however, reject the testimony of a defendant merely  
20 because of his interest. It's your duty as in the case of  
21 all witnesses to accept such testimony that you believe to  
22 be truthful and reject such testimony you believe to be  
23 false.

24 You will recall that the defendant took the  
25 witness stand, has previously been convicted of a crime, and

1 I now charge and emphasize: Under no circumstances are you  
2 to consider the fact defendant has previously been convicted  
3 of a crime as proof that he committed any of the crimes with  
4 which he is now charged. You may consider the defendant's  
5 previous conviction only for the purpose of assisting you in  
6 making your evaluation of his testimony. That is, his  
7 believability as a witness. In other words, to aid you in  
8 making your determination of what weight you will give to  
9 the testimony of the defendant. Decide this case solely  
10 upon the competent evidence before you or the lack of  
11 evidence in and determine the issues on what you believe to  
12 be credible, believable evidence. Base your verdict on the  
13 evidence alone.

14 You may have heard testimony concerning a prior  
15 proceeding in this case. The fact that there was such a  
16 proceeding should not in any way be considered by you as any  
17 indication of the guilt or lack of guilt of the defendant.

18 Now there are certain fundamental legal principles  
19 that are applicable to criminal cases in general. These are  
20 safeguards maintained by our Constitution with which the law  
21 surrounds every defendant in the criminal trial. These  
22 basic principles of law apply to every criminal case  
23 conducted in the courts of New York State regardless of the  
24 nature or seriousness of the crimes charged.

25 We now turn to those fundamental principles: The

1                   presumption of innocence, the burden of proof, and the  
2                   requirement of proof beyond a reasonable doubt.

3                   Throughout these proceedings, the defendant is  
4                   presumed to be innocent. As a result, you must find the  
5                   defendant not guilty unless on the evidence presented at  
6                   this trial you conclude that the People have proven  
7                   defendant guilty beyond a reasonable doubt.

8                   In determining whether the People have satisfied  
9                   their burden of proving defendant's guilt beyond a  
10                   reasonable doubt, you may consider all the evidence  
11                   presented whether by the People or by the defendant. In  
12                   doing so, however, remember that even though the defendant  
13                   introduced evidence, the burden of proof remains on the  
14                   People.

15                   Defendant is not required to prove that he is not  
16                   guilty. In fact, the defendant is not required to prove or  
17                   disprove anything. To the contrary, the People have the  
18                   burden of proving defendant guilty beyond a reasonable  
19                   doubt. This means that before you can find the defendant  
20                   guilty of a crime, the People must prove beyond a reasonable  
21                   doubt every element of the crime, including that the  
22                   defendant is the person that committed the crime. The  
23                   burden of proof never shifts from the People to the  
24                   defendant. If the People fail to their satisfy their burden  
25                   of proof, you must find defendant not guilty; if the People

1                   satisfy their burden of proof, you must find the defendant  
2                   guilty.

3                   Now what does our law mean when it requires proof  
4                   beyond a reasonable doubt? The law recognizes that in  
5                   dealing with human affairs, there are very few things in  
6                   this world that we now know with absolute certainty.  
7                   Therefore, the law does not require the People to prove a  
8                   defendant guilty beyond all possible doubt. In a criminal  
9                   case, a proof of guilt must be beyond a reasonable doubt.

10                  A reasonable doubt is an honest doubt of  
11                  defendant's guilt for which a reason exists based on the  
12                  nature and quality of the evidence. It's an actual doubt.  
13                  It's not based on some guess, not based on some whim, nor is  
14                  it based on any speculation. It is not an imaginary doubt.  
15                  It's a doubt that a reasonable person acting in a matter of  
16                  this importance would be likely to entertain because of the  
17                  evidence that was presented or because of the lack of  
18                  convincing evidence.

19                  Proof of guilt beyond a reasonable doubt is proof  
20                  that leaves you so firmly convinced of the defendant's guilt  
21                  that you have no reasonable doubt of the existence of any  
22                  element of the crime or of defendant's identity as the  
23                  person who committed the crime.

24                  In determining whether or not the People have  
25                  proven a defendant's guilt beyond a reasonable doubt, you

1 should be guided solely by a full and fair evaluation of the  
2 evidence. After carefully evaluating the evidence, each of  
3 you must decide whether or not that evidence convinces you  
4 beyond a reasonable doubt of defendant's guilt.

5                   Whatever your verdict may be, it must not rest  
6 upon baseless speculations, nor may be influenced in any way  
7 by bias, prejudice, sympathy or by a desire to bring an end  
8 to your deliberations or to avoid doing what is an  
9 unpleasant duty. If you are not convinced beyond a  
10 reasonable doubt that the defendant is guilty of a charged  
11 crime, you must find the defendant not guilty of that crime.  
12 If you are convinced beyond a reasonable doubt that the  
13 defendant is guilty of a charged crime, then you must find  
14 the defendant guilty of that crime.

15                   Now our law provides that in determining your  
16 verdict, you may not consider nor may you speculate  
17 concerning matters related to sentence or punishment. You  
18 must not discuss such matters nor should you your  
19 deliberations in any way be influenced by such matters. If  
20 you render a verdict of guilty, I am required to impose  
21 sentence in accordance with the law. The jury has no  
22 function relating to sentence. It has no function relating  
23 to punishment, and such matters are wholly immaterial to  
24 your deliberations on this case. Nor are you to be affected  
25 by other considerations outside of the evidence or by what

1                   the reaction to your verdict may be whether it be popular or  
2                   unpopular, whether it pleases or displeases anyone; nor  
3                   shall sympathy be of any concern to you.

4                   Our law states that you the jurors are the sole  
5                   judges of the facts, not the Court. It is for you to judge  
6                   what evidence is credible and what you deem important. It's  
7                   your obligation to calmly, patiently and intelligently  
8                   discuss the evidence in the case and the inferences you draw  
9                   from, to reason with each other, make an honest effort to  
10                   agree on the facts and to accept the law as I am giving it  
11                   to you.

12                   We now turn to the second part of my charge which  
13                   is the specific counts in this indictment, of which there  
14                   are 17.

15                   The first count of the indictment is criminal  
16                   sexual act in the first degree.

17                   Under our law, a person is guilty of criminal  
18                   sexual act in the first degree when he engages in oral  
19                   sexual conduct with another person by forcible compulsion.

20                   Under our law, it is also an element of this  
21                   offense that the sexual act was committed without consent.

22                   Oral sexual conduct takes place without a person's  
23                   consent when the lack of consent is also forcible  
24                   compulsion.

25                   I will define these terms: Oral sexual conduct

1 means conduct between two persons consisting of contact  
2 between the mouth and the vulva or vagina.

3 Forcible compulsion means to intentionally compel  
4 either, one, by the use of physical force; or two, by a  
5 threat, express or implied, which places a person in fear of  
6 immediate death or physical injury to herself.

7 So in order for you to find the defendant guilty  
8 of this crime, the People are required to prove from all the  
9 evidence in the case beyond a reasonable doubt both of the  
10 following two elements: One, that on or about and between  
11 May 1, 2005 and June 30, 2005, here in Queens County, the  
12 defendant engaged in oral sexual conduct with Sana Awan; and  
13 two, that the defendant did so without Sana Awan's consent  
14 by the use of forcible compulsion.

15 Therefore, if you find that the People have proven  
16 beyond a reasonable doubt both of those elements, you must  
17 find the defendant guilty of the crime of criminal act of  
18 sexual act in the first as charged in the first count.

19 On the other hand, if you find that the People  
20 have not proven beyond a reasonable doubt either one or both  
21 of those elements, you must find the defendant not guilty of  
22 the crime of criminal sexual act in the first degree as  
23 charged in the first count.

24 Now the first six counts -- I just read the first  
25 count to you -- the second count, the third count, the

1                   fourth count, the fifth count and the sixth count all charge  
2                   the same section of the Penal Law, criminal sexual act in  
3                   the first degree. But there is a different time period for  
4                   all six of these counts. As he said, the first one was  
5                   between May 1, 2005 and June 30, 2005; the second count is  
6                   criminal sexual act in the first degree and it's the exact  
7                   same charge I just read you for the first count, the time  
8                   period is on or about and between May 1, 2006 and May 31,  
9                   2006 here in Queens County.

10                   So in order for you to find the defendant guilty  
11                   of this crime, that is in the second count, People are  
12                   required to prove from all the evidence in the case beyond a  
13                   reasonable doubt both the following two elements: One, that  
14                   on or about and between May 1, 2006 and May 31, 2006 here in  
15                   Queens County, the defendant engaged in oral sexual conduct  
16                   with Sana Awan; and two, that the defendant did so without  
17                   Sana Awan's consent by the use of forcible compulsion.

18                   Therefore, if you find that the People have proven  
19                   beyond a reasonable doubt both of those elements, you must  
20                   find the defendant guilty of the crime of criminal sexual  
21                   act in the first degree as charged in the second count.

22                   On the other hand, if you find that the People  
23                   have not proven beyond a reasonable doubt either one or both  
24                   of those elements, you must find the defendant not guilty of  
25                   the crime of criminal sexual act in the first degree as

1 charged in the second count.

2 Now the third count, again, is criminal sexual act  
3 in the first degree, and as I said, it's the same charge  
4 that I read to you for criminal sexual act in the first  
5 degree under the first count except it again is a different  
6 time period.

7 In order for you to find defendant guilty of this  
8 crime, the People are required to prove from all the  
9 evidence in the case beyond a reasonable doubt both the  
10 following two elements: One, that on or about and between  
11 January 1, 2008 and February 28, 2008 here in Queens County,  
12 the defendant engaged in oral sexual conduct with Sana Awan;  
13 and two, that the defendant did so without Sana Awan's  
14 consent by the use of forcible compulsion.

15 Therefore, if you find that the People have proven  
16 beyond a reasonable doubt both of those elements, you must  
17 find the defendant guilty of the crime of criminal sexual  
18 act in the first degree as charged in the third count.

19 On the other hand, if you find that the People  
20 have not proven beyond a reasonable doubt either one or both  
21 of those elements, you must find the defendant not guilty of  
22 the crime of criminal sexual act in the first degree as  
23 charged in the third count.

24 Now the fourth count, again, is criminal sexual  
25 act in the first degree with a different time period. In

1 order for you to find the defendant guilty of this crime,  
2 the People are required to prove from all the evidence in  
3 the case beyond a reasonable doubt both of the following two  
4 elements: One, that on or about and between March 1, 2008  
5 and March 31, 2008 here in Queens County, the defendant  
6 engaged in oral sexual conduct with Sana Awan; and two, that  
7 the defendant did so without Sana Awan's consent by the use  
8 of forcible compulsion.

9 Therefore, if you find that the People have proven  
10 beyond a reasonable doubt both of those elements, you must  
11 find the defendant guilty of the crime of criminal sexual  
12 act in the first degree as charged in the fourth count.

13 On the other hand, if you find that the People  
14 have not proven beyond a reasonable doubt either one or both  
15 of those elements, you must find the defendant not guilty of  
16 the crime of criminal sexual act in the first degree as  
17 charged in the fourth count.

18 Again, the fifth count is the same, criminal  
19 sexual act in the first degree, and again, the two elements  
20 that must be proven are the same, again, except that it's a  
21 different time period: On or about and between April 1,  
22 2008 and April 30, 2008.

23 The sixth count, again, is criminal sexual act in  
24 the first degree. I will read it to you again and I will  
25 define those terms: Under our law, a person is guilty of

Under our law, it is also an element that this offense, criminal sexual act in the first degree is committed without consent. Oral sexual conduct takes place without a person's consent when the lack of consent results from forcible compulsion.

9 I will define those terms: Oral sexual conduct  
10 means conduct between two persons consisting of contact  
11 between the mouth and the vulva or vagina.

16 So in order for you to find the defendant guilty  
17 of this crime, People are required to prove from all the  
18 evidence in the case beyond a reasonable doubt both of the  
19 following two elements: One, that on or about and between  
20 May 1, 2008 and May 31, 2008 here in Queens County, the  
21 defendant engaged in oral sex with Sana Awan; and two, that  
22 the defendant did so without Sana Awan's consent by the use  
23 of forcible compulsion.

24 Therefore, if you find that the People have proven  
25 beyond a reasonable doubt both of those elements, you must

1                   find the defendant guilty of the crime of criminal sexual  
2                   act in the first degree as charged in the sixth count.

3                   On the other hand, if you find that the People  
4                   have not proven beyond a reasonable doubt either one or both  
5                   of those elements, you must find the defendant not guilty of  
6                   the crime of criminal sexual act in the first degree as  
7                   charged in the sixth count.

8                   Once again, those first six counts are all the  
9                   same charge, it's just a different time period for each  
10                  count.

11                  Seventh count is sexual abuse in the first degree.  
12                  Under our law, a person is guilty of sexual abuse in the  
13                  first degree when he subjects another person to sexual  
14                  contact by forcible compulsion.

15                  Under our law, it is also an element of this  
16                  offense that the sexual act was committed without consent.

17                  Sexual contact takes place without person's  
18                  consent when the lack of consent results in the forcible  
19                  compulsion.

20                  I will define those terms for you: Sexual contact  
21                  means any touching of the sexual or other intimate parts of  
22                  a person for the purpose of gratifying the sexual desire of  
23                  either party. It includes the touching of the actor by that  
24                  person as well as the touching of that person by the actor  
25                  whether directly or through clothing.

5 So in order for you to find the defendant guilty  
6 of this crime, the People are required to prove from all the  
7 evidence in the case beyond a reasonable doubt both of the  
8 following two elements: One, that on or about and between  
9 January 1, 2008 and February 28, 2008 here in Queens County  
10 the defendant subjected Sana Awan to sexual contact to wit,  
11 touching her vagina with his hand; and two, that the  
12 defendant did so without Sana Awan's consent by the use of  
13 forcible compulsion.

18 On the other hand, if you find that the People  
19 have not proven beyond a reasonable doubt either one or both  
20 of those elements, you must find the defendant not guilty of  
21 the crime of sexual abuse in the first degree as charged in  
22 the seventh count.

1 On or about and between June 1, 2008 and June 20,  
2 2008 -- and I will tell you the two elements that are  
3 necessary in order for to you find the defendant guilty of  
4 this crime -- the People are required to prove from all the  
5 evidence in the case beyond a reasonable doubt both of the  
6 following two elements: One, that on or about and between  
7 June 1, 2008 and June 20, 2008 here in Queens County,  
8 defendant subjected Sana Awan to sexual contact; to wit,  
9 touching her vagina with his hand; and two, that defendant  
10 did so without Sana Awan's consent by the use of forcible  
11 compulsion.

16 On the other hand, if you find that the People  
17 have not proven beyond a reasonable doubt either one or both  
18 of those elements, you must find the defendant not guilty of  
19 the crime of sexual abuse in the first degree as charged in  
20 the eighth count.

21 And ninth count, again, is sexual abuse in the  
22 first degree. It's the same as the other two counts except  
23 it involves another time period and another act, touching  
24 the breast with his hand.

25 So in order for you to find the defendant guilty

1 of this crime, the People are required to prove from all the  
2 evidence in the case beyond a reasonable doubt both the  
3 following two elements: One, that on or about and between  
4 January 1, 2008 and February 28, 2008 here in Queens County,  
5 the defendant subjected Sana Awan to sexual contact, to wit,  
6 touching her breast with his hand; and two, that the  
7 defendant did so without Sana Awan's consent by the use of  
8 forcible compulsion.

9 Therefore, if you find that the People have proven  
10 beyond a reasonable doubt both of those elements, you must  
11 find the defendant guilty of crime of sexual abuse in the  
12 second degree as charged in the ninth count.

13 On the other hand, if you find the People have not  
14 proven beyond a reasonable doubt either one or both of those  
15 elements, you must find the defendant not guilty of the  
16 crime of sexual abuse in the first degree as charged in the  
17 ninth count.

18 Tenth count, again, is sexual abuse in the first  
19 degree, and it involves another time period. In order for  
20 you to find the defendant guilty of this crime, the People  
21 are required to prove from all the evidence in the case  
22 beyond a reasonable doubt one of the following -- to both of  
23 the elements: That on June 1, 2008 and June 20, 2008 here  
24 in Queens County, the defendant subjected Sana Awan to  
25 sexual act, to wit, touching her breast with his hand; and

1                   two, that defendant did so without Sana Awan's consent by  
2                   the use of forcible compulsion.

3                   Therefore, if you find that the People have proven  
4                   beyond a reasonable doubt both of those elements, you must  
5                   find the defendant guilty of the crime of sexual abuse in  
6                   the first degree as charged in the tenth count.

7                   On the other hand, if you find that the People  
8                   have not proven beyond a reasonable doubt either one or both  
9                   of those elements, you must find the defendant not guilty of  
10                   the crime of sexual abuse in the first degree as charged in  
11                   the tenth count.

12                   The eleventh count, again, is sexual abuse in the  
13                   first degree. Same definitions I have given you previously,  
14                   and again, it involves another time period. In order for  
15                   you to find the defendant guilty of this crime, the People  
16                   are required to prove from all the evidence in the case  
17                   beyond a reasonable doubt both of the following two  
18                   elements: One, that on or about and between May 1, 2008 and  
19                   May 31, 2008 here in Queens County, defendant subjected Sana  
20                   Awan to sexual contact, to wit, touching her breast with his  
21                   hand; and two, that the defendant did so without Sana Awan's  
22                   consent by the use of forcible compulsion.

23                   Therefore, if you find the People have proven  
24                   beyond a reasonable doubt both of those elements, you must  
25                   find the defendant guilty of the crime of sexual abuse in

1 the first degree as charged in the eleventh count.

2 On the other hand, if you find that the People  
3 have not proven beyond a reasonable doubt either one or both  
4 of those elements, you must find the defendant not guilty of  
5 the crime of sexual abuse in the first degree as charged in  
6 the eleventh count.

7 Twelfth count, again, is sexual abuse in the first  
8 degree. I defined those terms for you. This involves  
9 another time period and another act. In order for you to  
10 find the defendant guilty of this crime, the People are  
11 required to prove from all the evidence in the case beyond a  
12 reasonable doubt both the following two elements: One, that  
13 on or about and between May 1, 2008 and May 31, 2008 here in  
14 Queens County, the defendant subjected Sana Awan to sexual  
15 contact, to wit, placing her hand on his penis; two, that  
16 the defendant did so without Sana Awan's consent by the use  
17 of forcible compulsion.

18 Therefore, if you find the People have proven  
19 beyond a reasonable doubt both of those elements, you must  
20 find the defendant guilty of the crime of sexual abuse in  
21 the first degree as charged in the twelfth count.

22 On the other hand, if you find that the People  
23 have not proven beyond a reasonable doubt either one or both  
24 of those elements, you must find the defendant not guilty of  
25 the crime of criminal sexual abuse in the first degree as

1 charged in the twelfth count.

2 The thirteenth count is criminal sexual act in the  
3 second degree. Under our law, a person is guilty of  
4 criminal sexual act in the second degree when, being 18  
5 years old or more, he engages in oral sexual conduct with  
6 another person less than fifteen years old.

7 Under our law, there is also an element of this  
8 offense that the oral sexual conduct was committed without  
9 the consent of the other person. Oral sexual conduct takes  
10 place without a person's consent when that person is deemed  
11 by law to be incapable of consent.

12 Under our law, a person is deemed incapable of  
13 consenting to oral sexual conduct when she is less than  
14 fifteen years old. Oral sexual conduct with such a person  
15 is always deemed to be without that person's consent even if  
16 in fact that person did consent. It is not a defense to  
17 this charge that the actor did not know with whom the actor  
18 engaged in oral sexual conduct was less than fifteen years  
19 old or that the actor believed that such person was fifteen  
20 years old or more on the date of the crime.

21 I will define this term again for you: Oral  
22 sexual conduct means conduct between persons consisting of  
23 contact between the mouth and the vulva or vagina.

24 So in order for you to find the defendant guilty  
25 of this crime, the People are required to prove from all the

1 evidence in the case beyond a reasonable doubt each of the  
2 following three elements: One, that on or about and between  
3 May 1, 2005 and June 30, 2005 here in Queens County, the  
4 defendant engaged in oral sexual conduct which Sana Awan;  
5 and two, that the defendant was eighteen years or more; and  
6 three, that Sana Awan was less than fifteen years old.

11 On the other hand, if you find that the People  
12 have not proven beyond a reasonable doubt any one or more of  
13 those elements, you must find the defendant not guilty of  
14 the crime of criminal sexual act in the second degree as  
15 charged in the thirteenth count.

16                          Fourteen: Criminal sexual act in the third  
17                          degree. Under our law, a person is guilty of criminal  
18                          sexual act in the third degree when, being 21 years or more,  
19                          he engages in oral sexual conduct with a person who is  
20                          incapable of consent by reason of being less than 17 years  
21                          old.

22 I already defined oral sexual conduct. Under our  
23 law, a person is incapable of consenting to oral sexual  
24 conduct when that person is less than 17 years old; thus,  
25 oral sexual conduct with such a person is always deemed to

1                   be without that person's consent, even if in fact that  
2                   person did consent.

3                   It's not a defense to a child, criminal sexual act  
4                   in the third degree, that the actor did not know that the  
5                   person with whom the actor had oral sexual conduct was less  
6                   than 17 years old, or that the actor believed that this  
7                   person was 17 years old or more on the date of the crime.

8                   So in order for you to find the defendant guilty  
9                   of this crime, the People are required to prove from all the  
10                   evidence in the case beyond a reasonable doubt each of the  
11                   following three elements: One, that on or about and between  
12                   May 1, 2006 and May 31, 2006 in Queens County, the defendant  
13                   engaged in oral sexual conduct with Sana Awan; and two, that  
14                   the defendant was 21 years old or more at the time; and Sana  
15                   Awan was incapable because she was less than 17 years old.

16                   Therefore, if you find the People have proven  
17                   beyond a reasonable doubt each of those elements, you must  
18                   find the defendant guilty of the crime of criminal sexual  
19                   act in the third degree as charged in the fourteenth count.

20                   On the other hand, if you find the People have not  
21                   proven beyond a reasonable doubt any one or more of those  
22                   elements, you must find the defendant not guilty of the  
23                   crime of criminal sexual act in the third degree as charged  
24                   in the fourteenth count.

25                   Fifteenth count is criminal sexual act in the